

ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

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MEETING NOTICE: The Administrative Regulation Review Subcommittee is scheduled to meet on July 8, 1997. See <u>tentative agenda</u> beginning on page 1 of this Register.	

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Title	Chapter	Regulation
806	KAR 50:	155
Cabinet, Department, Board or Agency	Office, Division, or Major Function	Specific Regulation

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ADMINISTRATIVE REGISTER - 1

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE TENTATIVE AGENDA - July 8, 1997 at 10 a.m. Room 149, Capitol Annex

(& E) - means that the emergency administrative regulation has previously been reviewed by the subcommittee

LEGISLATIVE RESEARCH COMMISSION

Capital Planning Advisory Board

1 KAR 6:020. Policies and procedures. (Deferred from February)

DEPARTMENT OF LAW

Division of Consumer Protection

40 KAR 2:250. Filing of annual reports by cemeteries. (Deferred from June)

40 KAR 2:260. Filing of annual reports by preneed burial licensees. (Deferred from June)

Medical Examination of Sexual Abuse Victims

40 KAR 3:010. Payment schedule to hospitals, physicians and sexual assault nurse examiners for medical examinations of victims of sexual offenses. (Deferred from May)

PERSONNEL CABINET

Department of Personnel, Unclassified

101 KAR 3:045E. Compensation plan and compensation incentive systems. (Deferred from May)

MILITARY AFFAIRS

Emergency Response Commission

Disaster and Emergency Services

106 KAR 1:091E. Kentucky Emergency Response Commission fee account grant requirements for local emergency planning committees. (Deferred from June)

FINANCE AND ADMINISTRATION CABINET

Office of the Secretary

Property

200 KAR 6:050(&E). Control of concealed deadly weapons in buildings owned or leased by the executive and judicial branches of state government.

Kentucky Infrastructure Authority

Authority

200 KAR 17:070. Drinking Water State Revolving Fund, priority formula and application requirements.

GENERAL GOVERNMENT CABINET

Board of Pharmacy

201 KAR 2:225. Special pharmacy permit-medical gasses. (Not Amended After Hearing) (Deferred from June)

Real Estate Commission

201 KAR 11:400. Agency disclosure requirements. (Amended After Hearing) (Deferred from June)

Board of Ophthalmic Dispensers

201 KAR 13:080. Inspection of establishments.

Board of Social Work

201 KAR 23:011. Repeal of 201 KAR 23:010, 201 KAR 23:030, 201 KAR 23:040, 201 KAR 23:100, and 201 KAR 23:110.

201 KAR 23:020. Fees.

201 KAR 23:060. Licensed social workers, certified social workers, and licensed clinical social workers.

201 KAR 23:070. Qualifying education and qualifying experience under supervision.

201 KAR 23:080. Code of ethical conduct.

201 KAR 23:140. Per diem compensation for board members.

DEPARTMENT OF AGRICULTURE

Division of Markets

Organic Agricultural Product Certification

302 KAR 40:010. Standard organic agricultural product requirements. (Deferred from June)

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

Department for Environmental Protection

Division for Air Quality

General Standards of Performance

401 KAR 63:101. National emission standards for organic hazardous air pollutants from the synthetic organic chemical manufacturing industry.

401 KAR 63:110. National emission standards for organic hazardous air pollutants from the synthetic organic chemical manufacturing industry for process vents, storage vessels, transfer operations, and wastewater.

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401 KAR 63:160. National emission standards for organic hazardous air pollutants for equipment leaks.

401 KAR 63:190. National emission standards for organic hazardous air pollutants for certain processes subject to the negotiated regulation for equipment leaks.

401 KAR 63:340. National emission standards for chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks.

401 KAR 63:360. Ethylene oxide emissions standards for sterilization facilities.

401 KAR 63:400. National emission standards for hazardous air pollutants for industrial process cooling towers.

401 KAR 63:420. National emission standards for gasoline distribution facilities (bulk gasoline terminals and pipeline breakout stations).

401 KAR 63:460. National emission standards for halogenated solvent cleaning.

401 KAR 63:520. National emission standards for hazardous air pollutants for epoxy resins production and non-nylon polyamides production.

401 KAR 63:701. National emission standards for magnetic tape manufacturing operations.

JUSTICE CABINET

Department of Corrections Division of Adult Institutions

Office of the Secretary

501 KAR 6:020. Corrections policies and procedures. (Deferred from June)

501 KAR 6:040. Kentucky State Penitentiary.

501 KAR 6:060. Northpoint Training Center.

501 KAR 6:120. Blackburn Correctional Complex.

501 KAR 6:130. Western Kentucky Correctional Complex. (Found Deficient by ARRS, 10/96) (Deferred from November)

Department of Juvenile Justice

Child Welfare

505 KAR 1:020E. Internal grievance procedure. (Deferred from April)

505 KAR 1:030E. DJJ policy and procedures manual. (Deferred from June)

TRANSPORTATION CABINET

Department of Highways Division of Aeronautics

Airport Zoning Commission

602 KAR 50:010. Definitions relating to 602 KAR Chapter 50.

602 KAR 50:060. Construction within jurisdictional airspace.

602 KAR 50:070. Standards for determining obstructions.

602 KAR 50:090. Permit application procedures.

602 KAR 50:100. Standards for marking or lighting structures.

602 KAR 50:120. Reconsideration and administrative hearing procedures.

EDUCATION, ARTS AND HUMANITIES CABINET

Education Professional Standards Board

Board

704 KAR 20:440. Repeal of 704 KAR 20:001, 704 KAR 20:002, 704 KAR 20:032, and 704 KAR 20:040.

704 KAR 20:696. Standards for accreditation of teacher education units and approval of programs.

704 KAR 20:706. Admission, placement, and supervision in student teaching.

WORKFORCE DEVELOPMENT CABINET

Department for Adult and Technical Education

Personnel System for Certified and Equivalent Employees (Deferred from May)

780 KAR 3:070. Attendance, compensatory time, and leave. (Amended After Hearing)

780 KAR 3:080. Extent and duration of school term, use of school days and extended employment. (Amended After Hearing)

Unclassified Personnel Administrative Regulations

780 KAR 6:060. Attendance, compensatory time, and leave. (Deferred from March)

Department for Employment Services

Division of Unemployment Insurance

Unemployment Insurance

787 KAR 1:210(&E). Employer contribution rates.

LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance

Division of Occupational Safety and Health Education and Training

Occupational Safety and Health (Deferred from June)

803 KAR 2:301 & E. Adoption and extension of established federal standards.

803 KAR 2:306 & E. Occupational health and environmental control.

803 KAR 2:308 & E. Personal protective equipment.

803 KAR 2:320 & E. Air contaminants.

803 KAR 2:402 & E. General safety and health provisions.

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803 KAR 2:403 & E. Occupational health and environmental controls.
803 KAR 2:404 & E. Personal protective and life saving equipment.
803 KAR 2:405 & E. Fire protection and prevention.
803 KAR 2:410 & E. Electrical.
803 KAR 2:411 & E. Scaffolds.
803 KAR 2:424 & E. Diving.
803 KAR 2:425 & E. Toxic and hazardous substances.
803 KAR 2:500 & E. Maritime employment.
803 KAR 2:900E. Repeal of 803 KAR 2:302. (Deferred from May)

Department of Workers Claims

Workers' Claims (Deferred from June)

803 KAR 25:010 & E. Procedure for adjustments of claims.
803 KAR 25:200 & E. Workers' compensation notice.
803 KAR 25:210 & E. Affidavit of exemption from KRS Chapter 342.
803 KAR 25:220 & E. Guaranty funds.
803 KAR 25:230 & E. Employee leasing.

PUBLIC PROTECTION AND REGULATION CABINET

Department of Insurance

Authorization of Insurers and General Requirements

806 KAR 3:190. Risk-based capital for insurers. (Amended After Hearing)

Rates and Rating Organizations (Deferred from June)

806 KAR 13:130E. Experience modification factors for workers' compensation insurers.
806 KAR 13:140E. Notice of right to seek review of application of workers' compensation insurance rates.

Health Maintenance Organizations

806 KAR 38:090E. Open enrollment. (Deferred from May)

Public Service Commission

Utilities

807 KAR 5:063. Filing requirements and procedures for proposals to construct telecommunications antenna towers. (Amended After Hearing) (Deferred from July)

Department of Financial Institutions

Securities

808 KAR 10:225. Procedural regulation governing hearing and hearing related procedures for matters before the Department of Financial Institutions. (Deferred from April)

Kentucky Racing Commission

Harness Racing

811 KAR 1:090E. Stimulants and drugs. (Deferred from June)

CABINET FOR HEALTH SERVICES

Long-Term Care

900 KAR 2:060. Hearings concerning transfer and discharge rights. (Amended After Hearing) (Deferred from Feb.)

Certificate of Need

900 KAR 6:015E. Certificate of need matters. (Deferred from March)

Department for Public Health

Division of Health Systems Development

Emergency Medical Services and Ambulance Service Providers

902 KAR 14:061. Repeal of 902 KAR 14:060.

State Health Plan

902 KAR 17:035E. State health plan for facilities and services. (Deferred from March)

Division for Environmental Health and Community Safety

Controlled Substances

902 KAR 55:040. Excluded over-the-counter products. (Amended After Hearing)
902 KAR 55:045. Exempt prescription products.
902 KAR 55:090. Exempt anabolic steroid products. (Deferred from June)

Radiology

902 KAR 100:040. General provisions for specific licenses. (Deferred from June)

CABINET FOR FAMILIES AND CHILDREN

Department for Social Insurance

Division of Management & Development

Public Assistance

904 KAR 2:006E. Technical requirements for the Kentucky Transitional Assistance Program (K-TAP).
904 KAR 2:015 & E. Supplemental programs for persons who are aged, blind, or have a disability.
904 KAR 2:016E. Standards for need and amount for the Kentucky Transitional Assistance Program (K-TAP).
904 KAR 2:017E. Kentucky Works supportive services. (Deferred from June)
904 KAR 2:370E. Technical requirements for Kentucky Works. (Deferred from June)

Food Stamp Program

904 KAR 3:010 & E. Definitions.

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904 KAR 3:020E. Financial requirements. (Deferred from June)
904 KAR 3:042E. Food Stamp Employment and Training Program. (Deferred from June)
Department for Social Services
Division of Family Services

Child Welfare

905 KAR 1:180E. DSS policy and procedures manual. (Deferred from June)
CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Administration and Development

Medicaid Services

907 KAR 1:022E. Nursing facility and intermediate care facility for the mentally retarded services. (Deferred from April)
907 KAR 1:025E. Payments for nursing facility and intermediate care facility for the mentally retarded services. (Deferred from April)
907 KAR 1:160E. Home and community based waiver services. (Deferred from June)
907 KAR 1:170E. Payments for home and community based waiver services. (Deferred from June)
907 KAR 1:270. Podiatry program services.
907 KAR 1:280. Payments for podiatry program services.
907 KAR 1:413. Repeal of 907 KAR 1:412.
907 KAR 1:433. Repeal of 907 KAR 1:374 and 907 KAR 1:378.
907 KAR 1:645. Resource standards for Medicaid. (Deferred from June)
907 KAR 1:655. Spousal impoverishment and nursing facility requirements for Medicaid. (Deferred from June)
907 KAR 1:665. Special income requirements for alternative intermediate services for individuals with mental retardation (AIS-MR), hospice, and home and community based services (HCBS). (Deferred from June)
907 KAR 1:710. Managed behavioral health care initiative (1915b Waiver).
907 KAR 1:720E. Coverage and payments for the Kentucky Early Intervention Program services provided through an agreement with the state Title V agency. (Deferred from June)

Department for Mental Health and Mental Retardation Services

Mental Health

908 KAR 2:200E. Coverage and payment for Kentucky Early Intervention Program services. (Deferred from June)

ADMINISTRATIVE REGISTER - 5

ADMINISTRATIVE REGULATION REVIEW PROCEDURE (See KRS Chapter 13A for specific provisions)

Notice of Intent

Administrative bodies shall file with the Regulations Compiler a Notice of Intent to promulgate an administrative regulation, including date, time and place of a public hearing on the subject matter to which the administrative regulation applies. This Notice of Intent, along with the public hearing information, shall be published in the Administrative Register. This Notice has to be filed and published in the Administrative Register, and the public hearing held or cancelled, prior to the filing of an administrative regulation.

After the scheduled hearing date, if held, the administrative body shall file with the Regulations Compiler a Statement of Consideration, setting forth a summary of the comments made at the public hearing, and the responses by the administrative body. This Statement shall not be published in the Administrative Register.

Filing and Publication

Administrative bodies shall file with the Regulations Compiler all proposed administrative regulations, public hearing information, tiering statement, regulatory impact analysis, fiscal note, and the federal mandate comparison. Those administrative regulations received by the deadline required in KRS 13A.050 shall be published in the Administrative Register.

Public Hearing

The administrative body shall schedule a public hearing on proposed administrative regulations to be held not less than twenty (20) nor more than thirty (30) days following publication. The time, date, and place of the hearing and the name and address of the agency contact person shall be included on the last page of the administrative regulation when filed with the Compiler's office.

Any person interested in attending the scheduled hearing must submit written notification of such to the administrative body at least five working (5) days before the scheduled hearing. If no written notice is received at least five (5) working days before the hearing, the administrative body may cancel the hearing.

If the hearing is cancelled, the administrative body shall notify the Compiler of the cancellation. If the hearing is held, the administrative body shall submit within fifteen (15) days following the hearing a statement of consideration summarizing the comments received at the hearing and the administrative body's responses to the comments.

No transcript of the hearing need to be taken unless a written request for a transcript is made, and the person requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript.

Review Procedure

If a proposed administrative regulation is amended as a result of the public hearing, the amended version shall be published in the next Administrative Register; and the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting following publication. If a proposed administrative regulation is not amended as a result of the hearing or if the hearing is cancelled, the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting. After review by the Subcommittee, the administrative regulation shall be referred by the Legislative Research Commission to an appropriate jurisdictional committee for a second review. The administrative regulation shall be considered as adopted and in effect as of adjournment on the day the appropriate jurisdictional committee meets or thirty (30) days after being referred by LRC, whichever occurs first.

ADMINISTRATIVE REGISTER - 6

NOTICES OF INTENT TO PROMULGATE ADMINISTRATIVE REGULATIONS

COUNCIL ON HIGHER EDUCATION

May 20, 1997

Council on Higher Education

(1) **13 KAR 2:060.** Degree program approval; equal opportunity goals. The subject matter of the proposed administrative regulation is the provision for monitoring compliance with postsecondary institutions' equal opportunity objectives in order to determine institutional eligibility for new programs as required by KRS 164.020(9).

(2) The Council on Higher Education intends to promulgate an amendment to an existing administrative regulation.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 31, 1997, at 10 a.m. in the conference room, Kentucky Council on Higher Education, 1024 Capital Center Dr., Suite 320, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least five (5) persons, or an administrative body, or an association having at least five (5) members;

and

2. A minimum of five (5) persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If five (5) persons, or an administrative body or association, request this public hearing, and agree in writing to be present at the public hearing, it will be held as scheduled.

(c) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people by July 21, 1997, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should submit a written request, no later than July 21, 1997, to the following address: Kentucky Council on Higher Education; Attn: Dennis L. Taulbee, General Counsel at 1024 Capital Center Dr., Suite 320, Frankfort, Kentucky 40601. The phone number is (502) 573-1555; the fax number is (502) 573-1535.

(b) On a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Kentucky Council on Higher Education at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 13 KAR 2:060, Degree program approval; equal opportunity goals is KRS 164.020(9).

(b) The administrative regulation to be promulgated by the council is an amendment to an existing administrative regulation.

(c) The necessity and function of the proposed administrative regulations is as follows: The Council on Higher Education approves the offering of all degree programs at each of the state-supported postsecondary education institutions pursuant to KRS 164.020(9). Approval of a new degree program is contingent upon an institution's having met its equal opportunities goals. The Council on Higher Education has the authority to grant a temporary waiver if an institution demonstrates progress in meeting equal opportunity goals. This administrative regulation sets forth the criteria used to determine compliance with an institution's equal opportunity goals and for the granting of a temporary waiver to a state-supported postsecondary education institution which has not met its goals.

(d) The benefits expected from the administrative regulations are: To ensure a diverse higher education system in Kentucky; that institutions address deficiencies in providing educational opportunities to all citizens; and, to determine institutional eligibility for new programs.

(e) This administrative regulation will be implemented by the Council on Higher Education.

KENTUCKY PERSONNEL BOARD

June 13, 1997

Kentucky Personnel Board

(1) Regulation Number and Title: **101 KAR 1:365** - Appeal and hearing procedures.

(2) The Kentucky Personnel Board intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 21, 1997, at 9 a.m., 5 Fountain Place, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 21, 1997, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mr. R. Hanson Williams, Executive Director, Kentucky Personnel Board, 28 Fountain Place, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

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(b) Persons who wish to file this request may obtain a request form from the Kentucky Personnel Board at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to appeal and hearing procedures is KRS Chapter 13A and KRS 18A.0751.

(b) The administrative regulation that the Kentucky Personnel Board intends to promulgate will amend 101 KAR 1:365, Appeal and hearing procedures. This regulation will supplement the provisions of KRS Chapter 13B by providing for response time to exceptions, oral arguments and incorporation by reference of definitions set forth in the Kentucky Revised Statutes.

(c) The necessity and function of the proposed administrative regulation is as follows: This amendment is to supplement the provisions of KRS Chapter 13B.

(d) The benefits expected from administrative regulation are: Enhancement of administrative hearing procedures.

(e) The administrative regulation will be implemented as follows: Create new provisions for response time to exceptions, oral arguments and incorporation of statutory definitions.

FINANCE AND ADMINISTRATION CABINET Office of the Secretary

June 13, 1997

Finance and Administration Cabinet

Office of the Secretary

(1) **200 KAR 22:041.** Repeal of 200 KAR 22:040.

(2) The Finance and Administration Cabinet intends to promulgate the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 21, 1997, at 9 a.m. in Room 386, Capitol Annex, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if:

1. It is requested in writing by at least five (5) persons, or an administrative body, or an association having at least five (5) members; and

2. A minimum of five (5) persons, or the administrative body, or association agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten (10) days prior to July 21, 1997, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing or make written comments should mail their written request or comments to the following address: Gail Prewitt, Office of the Secretary, Finance and Administration Cabinet, Room 383, Capitol Annex, Frankfort, Kentucky 40601.

(b) On a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Office of Legal and Legislative Services, Room 374 Capitol Annex, Frankfort, Kentucky 40601.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of the above-cited administrative regulation is contained in KRS 18A.415 and 18A.430(1)(a), (b), and (c).

(b) The proposed regulation will repeal the regulation promulgating the comprehensive employment manual of the Natural Resources and Environmental Protection Cabinet's Division of Abandoned Lands, Program Development and Program Services Branches, for use in the Pilot Personnel Program.

(c) The "Necessity and Function" of the proposed administrative regulation is as follows: KRS 18A.430(1)(a) provides that each pilot agency participating in the Pilot Personnel Program authorized by KRS 18A.400 to 18A.450 shall develop comprehensive employment manuals establishing conditions of employment for employees in the Pilot Personnel Program. KRS 18A.430(1)(b) requires that the employment manuals be promulgated by administrative regulation. The comprehensive employment manual of the Natural Resources and Environmental Protection Cabinet's Division of Abandoned Lands, Program Development and Program Services Branches, for use in the Pilot Personnel Program was promulgated by regulation 200 KAR 22:040. KRS 18A.415 provides that the Personnel Steering Committee may discontinue a pilot personnel program at any time if the program goals and objectives set forth in the agency's application are not being met and reasonable attempts at corrective action have failed. 200 KAR 22:040 is no longer required because the Personnel Steering Committee has voted to discontinue the pilot program for the Natural Resources and Environmental Protection Cabinet's Division of Abandoned Lands, Program Development and Program Services Branches pursuant to KRS 18A.415.

(d) The benefit expected from this proposed administrative regulation is as follows: To restore the provisions of KRS Chapter 18A which were suspended to allow for the pilot program of the Natural Resources and Environmental Protection Cabinet's Division of Abandoned Lands, Program Development and Program Services Branches.

(e) This administrative regulation will be implemented by the Natural Resources and Environmental Protection Cabinet by notifying the employees of the Division of Abandoned Lands, Program Development and Program Services Branches that the pilot program has been discontinued and 200 KAR 22:040 repealed.

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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division for Air Quality

June 9, 1997

Natural Resources and Environmental Protection Cabinet
Department for Environmental Protection
Division for Air Quality

(1) **401 KAR 51:010**, Attainment status designations, will upon adoption, amend the existing administrative regulation. The subject matter of the amendment is a revision to update Kentucky's attainment status designations to agree with the federal designations. This amendment will redesignate Boyd County and a portion of Greenup County from moderate ozone nonattainment to attainment. The amendment will also add a requirement that a road or intersection of two or more roads that defines a nonattainment boundary for an area which is a portion of a county designated as nonattainment for ozone for any classification except marginal include as nonattainment an area extending 750 feet from the center of the road or intersection.

(2) The Division for Air Quality intends to promulgate an amendment to the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed amendment has been scheduled for July 22, 1997, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 22, 1997, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Division for Air Quality, Attention Millie Ellis, Supervisor, Regulation Development Section, Program Planning and Administration Branch, 803 Schenkel Lane, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Division for Air Quality at the address listed above.

(7) Information relating to the proposed amendment.

(a) The statutory authority for the promulgation of this proposed amendment relating to the designation of ozone nonattainment areas is KRS 224.10-100 and 42 USC 7401-7626.

(b) The administrative regulation that the Division for Air Quality intends to promulgate will amend the existing regulation, 401 KAR 51:010. It will make the attainment status designations for ozone agree with the U.S. EPA designations.

(c) The necessity and function of the proposed amendment is as follows: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. 42 USC 7401-7626 likewise requires the state to implement standards for national primary and secondary ambient air quality. The Division for Air Quality proposes this amendment to update the status for ozone nonattainment for areas within the state and to assure compatibility with the U.S. EPA designations.

(d) The benefit expected from this amendment is that the state regulations will be applied to the areas based on the most recent ozone classification.

(e) The amended administrative regulation will be implemented as follows: On and after the effective date, affected sources shall comply with the designations in 401 KAR 51:010, as part of the existing regulatory program.

June 9, 1997

Natural Resources and Environmental Protection Cabinet
Department for Environmental Protection
Division for Air Quality

(1) **401 KAR 58:001**, Definitions and abbreviations of terms used in 401 KAR Chapter 58. The subject matter of this administrative regulation is definitions and abbreviations of terms used in 401 KAR Chapter 58, Asbestos.

(2) The Division for Air Quality intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the new administrative regulation has been scheduled for July 22, 1997, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and an agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 22, 1997, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Division for Air Quality, Attention Millie Ellis, 803 Schenkel Lane, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

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(b) Persons who wish to file this request may obtain a request form from the Division for Air Quality at the address listed above.

(7) Information relating to the new administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to definitions and abbreviations of terms used in 401 KAR Chapter 58 is KRS 224.10-100.

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend an existing administrative regulation. It will create a source for standardized definitions and abbreviations of terms related to asbestos. It will provide for a uniform understanding of the terminology used in 401 KAR Chapter 58.

(c) The necessity and function of the new administrative regulation is as follows: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides for the defining of terms to be used in 401 KAR Chapter 58. The Division for Air Quality proposes this administrative regulation to provide clarification of terminology for all air quality regulations in 401 KAR Chapter 58.

(d) The benefit expected from this administrative regulation is: The definitions for asbestos control will be compatible with the federal definitions and, therefore, approvable by the U.S. EPA. The proposed administrative regulation will provide clarification of terminology for all air quality regulations in 401 KAR Chapter 58.

(e) The administrative regulation will be implemented as follows: On and after the effective date of this administrative regulation, the regulations in 401 KAR Chapter 58 will use the standard definitions contained in 401 KAR 58:001 as part of the existing regulatory program.

June 9, 1997

Natural Resources and Environmental Protection Cabinet

Department for Environmental Protection

Division for Air Quality

(1) **401 KAR 58:005**, Accreditation of asbestos professionals, will upon adoption amend the existing regulation. The subject matter of the amendment expands Kentucky's accreditation requirements for school asbestos abatement to include asbestos professionals involved with other commercial and public buildings.

(2) The Division for Air Quality intends to promulgate an amendment to the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed amendment has been scheduled for July 22, 1997, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and an agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 22, 1997, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Division for Air Quality, Attention Millie Ellis, 803 Schenkel Lane, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Division for Air Quality at the address listed above.

(7) Information relating to the proposed amendment.

(a) The statutory authority for the promulgation of this proposed amendment relating to asbestos accreditation is KRS 224.10-100, 224.20-100, 224.20-110(1), 224.20-120, 224.20-300, 224.20-310; 42 USC 2641 to 2654 (ASHERA); PL 101-637 (ASHARA); and 40 CFR Part 763, Appendix C to Subpart E, Asbestos Model Accreditation Plan (MAP).

(b) The administrative regulation that the Division for Air Quality intends to promulgate will amend the existing regulation, 401 KAR 58:005. It will expand the accreditation of asbestos professionals and approval of asbestos training courses to include asbestos abatement accreditation for commercial and public buildings as well as schools.

(c) The necessity and function of the proposed amendment is as follows: Section 206 of Title II of the Toxic Substances Control Act (also known as the Asbestos Hazard Emergency Response Act, or ASHERA) requires accreditation of schools' asbestos professionals. It also requires states to develop their own accreditation programs based upon the U.S. EPA's Model Accreditation Plan, or MAP (Appendix C to ASHERA). Public Law 101-637 (the Asbestos School Hazard Abatement Reauthorization Act of 1990, or ASHARA) expanded these accreditation requirements to include asbestos professionals in public and commercial buildings, required the U.S. EPA to revise its MAP accordingly, and mandated states to update their accreditation programs to be as stringent as the revised MAP within 180 days after the commencement of the first regular legislative session following the revised MAP's promulgation.

(d) The benefit expected from this amendment is that it will enable Kentucky to have a U.S. EPA-approved accreditation program as mandated by federal law. This administrative regulation will give Kentucky primacy for overseeing accreditation requirements, so that the Division for Air Quality will approve qualified training providers in five disciplines and accredit their qualified graduates (including renewals of accreditations). Additionally, this administrative regulation will help training course providers and their graduates by decentralizing their accreditation requirements from the federal to the state level.

(e) The amended administrative regulation will be implemented as follows: On and after the effective date, persons subject to 401 KAR 58:005 shall comply with its provisions, and the Division for Air Quality will enforce this administrative regulation as part of the existing regulatory program.

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June 9, 1997

Natural Resources and Environmental Protection Cabinet
Department for Environmental Protection
Division for Air Quality

(1) **401 KAR 58:025**, National emission standard for asbestos, will, upon adoption, amend the existing regulation that adopts the federal national standard for hazardous air pollutants (NESHAP) for asbestos. The subject matter of the amendment is the incorporation by reference of the current federal NESHAP regulation, 40 CFR 61.140 through 61.157 (40 CFR 61, Subpart M) and Appendix A to Subpart M. 401 KAR 57:011 was recodified to 401 KAR 58:025 on June 10, 1997.

(2) The Division for Air Quality intends to promulgate an amendment to the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed amendment has been scheduled for July 22, 1997, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree in writing to be present at the public hearing.

(b) If a request for a public hearing, and an agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 22, 1997, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Division for Air Quality, Attention Millie Ellis, 803 Schenkel Lane, Frankfort, Kentucky 40601, and phone number (502) 573-3382.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Division for Air Quality at the address listed above.

(7) Information relating to the proposed amendment.

(a) The statutory authority for the promulgation of this proposed amendment is KRS 224.10-100, 224.20-100, 224.20-110(1), 224.20-120; 40 CFR 61, Subpart M; and 42 USC 7412(l)(1).

(b) The administrative regulation that the Division for Air Quality intends to promulgate will amend the existing regulation, 401 KAR 58:025. It will update the federal NESHAP previously incorporated by reference in 401 KAR 57:011, which was recodified as 401 KAR 58:025 on June 10, 1997.

(c) The necessity and function of the proposed amendment is as follows: 42 USC 7412(l)(1) allows the U.S. EPA to delegate to states the authority for implementing and enforcing the federal NESHAP regulations. The amendment to this administrative regulation contains the same provisions as the federal regulation. The Division for Air Quality is proposing this amendment so that the delegation of authority for this federal regulation which has been granted to the Commonwealth will continue.

(d) The benefit expected from this amendment is that the current delegation of authority will continue, and sources subject to the federal NESHAP will be able to work with the state rather than the federal government.

(e) The amended administrative regulation will be implemented as follows: on and after the effective date, those sources subject to 40 CFR 61.140 through 61.157 shall comply with the provisions of 401 KAR 58:025, and the Division for Air Quality will enforce this administrative regulation as part of the existing regulatory program.

DEPARTMENT OF KENTUCKY STATE POLICE

April 25, 1997

Department of Kentucky State Police

(1) Regulation Number and Title: **502 KAR 45:145**. Merit Pay Program.

(2) The Department of State Police intends to promulgate an amendment to the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for July 25, 1997 at 10 a.m. at Kentucky State Police Headquarters, Commissioner's Conference Room, 919 Versailles Road, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and
2. A minimum of five persons, or the administrative body or association agree, in writing, to be present at the public hearing.

(4)(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to July 25, 1997, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to Jean Ann Gabbard, Personnel Manager, Kentucky State Police Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601.

(b) On the request for a public hearing, a person shall state:

1. "I agree to attend the public hearing;" or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the department at the address listed above.

(7)(a) The statutory authority for the promulgation of an administrative regulation relating to the compensation of officers.

(b) The administrative regulation that the Department of State Police proposes amends 502 KAR 45:145 in that it allows the commissioner

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the option of awarding 40 hours vacation leave in lieu of a merit pay award.

(c) The necessity and function of the proposed amendment to the administrative regulation is to enable the department to continue this beneficial program during a budgetary deficit.

(d) The benefits expected to flow from this amended administrative regulation are: Cost savings and increased efficiency.

(e) The amended administrative regulation will be implemented as follows: An emergency amendment to an administrative regulation, followed by a regular regulation, with announcements to all effected personnel upon filing.

TRANSPORTATION CABINET

June 15, 1997

Transportation Cabinet

(1) **603 KAR 4:040**, relating to the Tourist Oriented Directional Sign Program on Kentucky's highways.

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation which amends 603 KAR 4:040. The Transportation Cabinet is considering altering the entities which are eligible for tourist oriented directional signs. In implementing this program, each state has established that there is insufficient space for all of the tourist oriented directional signs (TODS) which are wanted. Due to the limited amount of space available, several other jurisdictions have abolished the issuance of TODS for gas, food, and some even for lodging. The Transportation Cabinet wishes to provide the signs which are most needed by the traveling public. To do this the cabinet will discuss the following concepts:

(a) Abolishing TODS for gas and food;

(b) Prioritizing TODS so that entities meeting the definition of tourist activities have top priority; second priority would go to campgrounds; third priority to lodging; fourth to food; and fifth to gas;

(c) What would happen to the existing TODS which do not meet the proposed new standards (grandfather or not?); and

(d) Other issues which will be addressed at the public comment hearing are size and material of TODS and headers for TODS.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 21, 1997 at 11 a.m. local prevailing time, at 501 High Street, in Training Rooms A & B on the first floor of the State Office Building, Frankfort, Kentucky 40622.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 21, 1997, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sandra Pullen Davis, 501 High Street, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Transportation Cabinet at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the TODS Program is KRS 189.337.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will amend an existing administrative regulation, 603 KAR 4:040.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 189.337 requires the Department of Highways to establish standards for the placement of signs within highway right-of-way on a public road. The Transportation Cabinet has promulgated 603 KAR 5:050 which deals with all traffic control devices by incorporating the "Manual on Uniform Traffic Control Devices" by reference. The "Manual on Uniform Traffic Control Devices" allows for the erection of tourist oriented directional signs (TODS) to provide directional information for tourist activities offering goods and services that are of significant interest to the traveling public within certain perimeters, but requires each jurisdiction to establish policies for those areas not covered in the "manual". This administrative regulation set forth the criteria to be followed in the erection and maintenance of TODS.

(d) The benefit expected from this administrative regulation is the use of available space for signage in a manner that will most benefit the traveling public.

(e) The change to the administrative regulation will be implemented by requiring the Transportation Cabinet's contractor on the logo and TODS Program to amend contracts and possibly even remove some signs.

(8) If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by July 11, 1997. This request does not have to be in writing. This notice can be provided in an alternate format upon request.

June 15, 1997

Transportation Cabinet

(1) **603 KAR 5:070**, Motor vehicle dimension limits.

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation amending 603 KAR 5:070 governing the dimension limits of motor vehicles on state-maintained highways. Specifically, the administrative regulation process will consider forbidding the use of larger dimension motor vehicles (STAA trucks) on a portion of KY 418 and KY 1973 in Fayette County. In addition, the Transportation Cabinet will consider the other changes which need to be made to vehicle dimension limits on certain highways. Specifically, the cabinet will consider replacing KY 19 in Bracken County with KY 8 and KY 8 with KY 3071 in Mason County for use by STAA trucks. Completion of construction of these highway segments allows the cabinet to shift the STAA trucks from marginal highways to roads constructed for the larger

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dimension vehicles.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 22, 1997 at 3 p.m. local prevailing time, in the Conference Room of the Highway District Office, at 763 New Circle Road, NW, Lexington, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 22, 1997, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sandra Pullen Davis, 501 High Street, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Transportation Cabinet at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 189.222.

(b) The administrative regulations that the Transportation Cabinet intends to promulgate will amend existing administrative regulation 603 KAR 5:070.

(c) The necessity and function of the proposed administrative regulations are as follows: KRS 189.222 authorizes the Secretary of the Transportation Cabinet to establish reasonable size limits for motor vehicles using the State Primary Road System. Further, 23 CFR Part 658 requires that a reasonable access on state-maintained highways and locally controlled highways be included with the list of highways over which motor vehicles with increased dimensions should be allowed to operate. This administrative regulation is adopted to set the maximum motor vehicle and combination vehicle dimensions for all classes of highways.

(d) The benefit expected from this administrative regulation is an increase in highway safety.

(8) If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by July 10, 1997. This request does not have to be in writing. This notice can be provided in an alternate format upon request.

KENTUCKY BOARD OF EDUCATION

June 10, 1997

Kentucky Board of Education

(1) **704 KAR 3:455**, Instructional material and textbook adoption process.

(2) The Kentucky Board of Education intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 25, 1997, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if it is requested, in writing, by at least five (5) persons, or an administrative body, or an association having at least five (5) members; and a minimum of five (5) persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If five (5) persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 10 days prior to July 25, 1997, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mr. Kevin Noland, General Counsel, Office of Legal Services, Kentucky Department of Education, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6) (a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Kentucky Board of Education at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for amending an existing administrative regulation relating to the textbook and instructional material adoption process is found in KRS 156.400 to 156.476, 157.100 to 157.190, and 160.345.

(b) The administrative regulation that the Kentucky Board of Education intends to amend is the adoption process for textbooks and instructional materials.

(c) The necessity, function, and conformity of the proposed administrative regulation is to amend standards and procedures to follow when carrying out the statutory requirements dealing with textbooks and instructional materials.

(d) The benefits expected from the administrative regulation amendments are to provide:

1. A textbook and instructional material adoption cycle in which the content areas included in each year of the cycle are grouped based on the content areas in the academic expectations, the KIRIS testing groups, and a more logical content connection;

2. Clarification of language with regard to piloting new programs;

3. Access to current manufacturing standards and specifications for textbooks and instructional materials;

4. Clarification related to certain materials that may not be purchased with state textbook funds;

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5. More accurate figures for the preparation of local textbook/instructional materials allocations; and
6. An increase in the maximum allowable rental fee to help defray the increased costs of high school materials.
- (e) The administrative regulation will be implemented as follows: Information about the amended regulation will be provided to district and school personnel in order that financial matters and decision-making responsibilities can be aligned.

WORKFORCE DEVELOPMENT CABINET State Board for Adult and Technical Education

May 15, 1997

Workforce Development Cabinet

State Board for Adult and Technical Education

- (1) Regulation Number and Title: **785 KAR 1:010**, Testing program.
- (2) The Cabinet for Workforce Development, State Board for Adult and Technical Education intends to amend the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 21, 1997, at 9 a.m. in the Conference Room, Third Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 21, 1997, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Harlan Stubbs, Kentucky GED Administrator, Department for Adult Education and Literacy, 500 Mero Street, Third Floor, Capital Plaza Tower, Frankfort, Kentucky 40601. Phone (502) 564-5114, FAX (502) 564-5436.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from Harlan Stubbs, Kentucky GED Administrator, Department for Adult Education and Literacy at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS Chapter 151B.
- (b) The administrative regulation that the State Board for Adult and Technical Education intends to promulgate will amend 785 KAR 1:010, Testing program. It will increase the GED testing fees from \$25 per test battery or \$5 per subtest to \$30 per test battery or \$6 dollars per subtest. Kentucky's GED testing fees are set for cost-recovery. The GED Testing Service of the American Council on Education has increased the leasing cost per test battery by \$5 per examinee at each testing session effective with the contract renewal date which is August 1, 1997.
- (c) The necessity and function of the amended administrative regulation: This administrative regulation establishes the means whereby adults may be tested by official GED testing centers to determine their eligibility for receiving a high school equivalency diploma.
- (d) The benefits expected from this administrative regulation are to enable Kentucky to continue to provide GED testing services by raising the testing fees to offset the increased costs associated with leasing GED test materials from the GED Testing Service.
- (e) The administrative regulation will be implemented as follows: The increased fee will be assessed by official GED testing centers.

May 15, 1997

Cabinet for Workforce Development

State Board for Adult and Technical Education

- (1) Regulation Number and Title: **785 KAR 1:020**, High school equivalency diploma.
- (2) The Cabinet for Workforce Development, State Board for Adult and Technical Education intends to amend the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 21, 1997, at 9 a.m. in the Conference Room, Third Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 21, 1997, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Harlan Stubbs, Kentucky GED Administrator, Department for Adult Education and Literacy, 500 Mero Street, Third Floor, Capital Plaza Tower, Frankfort, Kentucky 40601. Phone (502) 564-5114, FAX (502) 564-5436.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from Harlan Stubbs, Kentucky GED Administrator, Department for

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Adult Education and Literacy at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS Chapter 151B.

(b) The administrative regulation that the State Board for Adult and Technical Education intends to promulgate will amend 785 KAR 1:020, High school equivalency diploma. It will increase the minimum standard passing score on each of the GED tests from 35 to 40 as required by the Commission on Educational Credit and Credentials and to reflect the minimum standard passing scores cited in 785 KAR 1:010, Testing program. 785 KAR 1:020 was not revised when 785 KAR 1:010 was revised due to an administrative oversight.

(c) The necessity and function of the amended administrative regulation: This administrative regulation establishes the means whereby a high school equivalency diploma shall be issued through the Department for Adult Education and Literacy to adults who pass the GED test.

(d) The benefits expected from this administrative regulation are to enable Kentucky to meet the new requirements of the Commission on Educational Credit and Credentials which sets the standards for the American Council on Education's adult education programs.

(e) The administrative regulation will be implemented as follows: The new requirements will be implemented by the department.

LABOR CABINET Kentucky Department of Workers' Claims

June 13, 1997

Labor Cabinet

Kentucky Department of Workers' Claims

(1) **803 KAR 25:190.** Utilization review and medical bill audit.

(2) The Commissioner of the Department of Workers' Claims intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 21, 1997, at 10 a.m. at the Department of Workers' Claims, 1270 Louisville Road, Perimeter Park West, Building C, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 21, 1997, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, ATTN: Carla Montgomery, Staff Attorney.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing"; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Department of Workers' Claims at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to a workers' compensation utilization review and medical bill audit is KRS 342.035(5).

(b) The administrative regulation that the commissioner intends to promulgate will amend 803 KAR 25:190, Utilization review and medical bill audit, as follows: It will more specifically define the procedures whereby the Department of Workers' Claims approves and monitors utilization review and medical bill audit plans. It will more specifically define application procedures, plan requirements, and the interaction with other statutes and regulations under KRS Chapter 342.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 342.035(5) provides that the Commissioner of the Department of Workers' Claims shall promulgate administrative regulations that require each insurance carrier, group self-insurer and individual self-insured employer to certify to the commissioner the program it has adopted to insure compliance with the medical fee schedule provisions of KRS 342.035(1) and (4). KRS 342.035(5) also requires the commissioner to promulgate administrative regulations governing medical provider utilization review activities conducted by an insurance carrier, group self-insurer or self-insured employer pursuant to KRS Chapter 342. The necessity of the amended regulation is to eliminate confusion and inconsistencies among the utilization review and medical bill audit programs. The function of this administrative regulation is to insure that all insurance carriers, group self-insurers, and individual self-insured employers implement effective utilization review and medical bill audit programs.

(d) The benefits expected from administrative regulation are: Additional guidance to insurance carriers, group self-insurers, and individual self-insured employers in submitting utilization review and medical bill audit plans to the Department of Workers' Claims for approval in compliance with KRS 342.035(5) and 803 KAR 25:190.

(e) The administrative regulation will be implemented as follows: After comments about the current utilization review and medical bill audit plan requirements are received during the Notice of Intent hearing, they will be considered and the current regulation will be reviewed to determine what amendments are warranted.

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CABINET FOR HEALTH SERVICES Office of Inspector General

June 4, 1997
Cabinet for Health Services
Office of Inspector General

- (1) **902 KAR 20:016** - Hospitals; operations and services.
- (2) The Office of Inspector General intends to promulgate the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 30, 1997, at 9 a.m. in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 30, 1997, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Administrative Specialist Principal, Office of the Counsel, Cabinet for Health Services, 275 East Main Street, 4-West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900, Fax: (502) 564-7573.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from: Administrative Regulation Coordinator, Office of Inspector General, CHR Building, 4-East, 275 East Main Street, Frankfort, Kentucky 40621.
- (c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans with Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of all of the administrative regulations relating to health facilities and health services is KRS 216B.042 and 216B.105.
 - (b) The cabinet intends to amend 902 KAR 20:016 to add a new Section 5 regarding long-term acute inpatient hospital services.
 - (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: To comply with the mandate of KRS 216B.042 and 216B.105 in the establishment of licensure requirements for the operation of hospitals.
 - (d) The benefits expected from these proposed amendments are that they will permit hospitals to provide long-term acute inpatient hospital services.
 - (e) The administrative regulation will be implemented as follows: By the Division of Licensing and Regulation in the Office of Inspector General, Cabinet for Health Services.

Department for Public Health Division of Environmental Health and Community Safety

June 1, 1997
Cabinet for Health Services
Department for Public Health
Division of Environmental Health and Community Safety

- (1) **902 KAR 55:095**, Prescription for Schedule II controlled substance - facsimile transmission or partial filling.
- (2) The Cabinet for Health Services, Department for Public Health intends to promulgate an administrative regulation governing the subject matter listed above.

The pu(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for 9 a.m., July 30, 1997, in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main St., Frankfort, Kentucky.
- (4)(a) Public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 30, 1997, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Cabinet Regulation Coordinator, Office of General Counsel, Cabinet for Health Services, 275 East Main Street, 4 - West, Frankfort, Kentucky 40621, (502) 564-7900.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form by writing the Administrative Regulation Coordinator, Commissioner's Office, Department for Public Health, 275 E. Main Street, Frankfort, Kentucky 40621, or by calling (502) 564-3970 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

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(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 902 KAR 55:095 is KRS 194.050, 218A.250, EO 96-862.

(b) The amended administrative regulation that the Department for Public Health intends to promulgate will amend 902 KAR 55:095, Prescription for Schedule II controlled substance - facsimile transmission or partial filling. The amendments will conform to recently amended federal regulations.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources, establishes and creates the Cabinet for Health Services, changes the name of the Department for Health Services to Department for Public Health, and places the Department for Public Health and its programs under the Cabinet for Health Services. KRS 218A.250 directs the Cabinet for Health Services to promulgate administrative regulations for carrying out the provisions of KRS Chapter 218A relating to controlled substances. The purpose of this administrative regulation is to permit the transmission of prescriptions for Schedule II controlled substances between the prescriber and dispenser via facsimile, on a limited basis, in order to facilitate the delivery of medications to certain patients whose medication needs change quickly and whose prescription should be communicated rapidly. This administrative regulation also permits the partial filling of prescriptions for Schedule II controlled substances to certain patients whose medication needs may be long term but who wish to store limited quantities or in situations where the pharmacy is unable to supply the full quantity prescribed.

(d) The benefits expected from administrative regulation are: Conformity with federal regulation and improved health care delivery.

(e) The administrative regulation will be implemented as follows: No implementation is necessary since the requirements conform to existing federal regulations.

Department for Public Health Office of Radiation Control

June 13, 1997

Cabinet for Health Services
Department for Public Health
Office of Radiation Control

(1) **902 KAR 100:165.** Notices, reports and instructions to employees provides general provisions and requirements for the notices, reports and instructions for the protection of workers who may be exposed to radiation in their employment.

(2) The Cabinet for Health Services, Department for Public Health, Division of Environmental Health and Community Safety, intends to amend 902 KAR 100:165 governing the subject matter cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 30, 1997 at 9 a.m., in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 30, 1997, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Telephone (502) 564-7900, Fax (502) 564-7573.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from Dee Swain, Administrative Regulation Coordinator, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans with Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) KRS 211.844 provides the statutory authority for the promulgation of administrative regulations relating to ionizing radiation by the Cabinet for Health Services.

(b) The administrative regulation that the Cabinet for Health Services, Department for Public Health intends to amend, concerns notices, reports and instructions provided to employees for their protection in the workplace who may be exposed to radiation. The amendment provides for changes as required by KRS Chapters 13A and 13B.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The amendment is necessary to meet U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as required by Section 274 of the Atomic Energy Act, as amended. KRS 211.844(2) states the Cabinet for Health Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. The KRS 211.842(3) states the Cabinet for Human Resources shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, nonionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Human Resources shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste. 902 KAR 100:165

ADMINISTRATIVE REGISTER - 17

provides general provisions and requirements for notices, reports and instructions to employees.

(d) The benefits expected from this administrative regulation are: The workers who may be exposed to radiation in their employment will be able to better understand the provisions of the regulation.

(e) The administrative regulation will be implemented as follows: The Division of Environmental Health and Community Safety, Department for Public Health will be responsible for the implementation of the administrative regulation.

CABINET FOR FAMILIES AND CHILDREN Department for Social Insurance Division of Management and Development

June 1, 1997

Cabinet for Families and Children

Department for Social Insurance

Division of Management and Development

(1) **904 KAR 2:035**. Right to apply and reapply.

(2) Cabinet for Families and Children, Department for Social Insurance intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 30, 1997, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 30, 1997, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Judy Trigg, Regulation Coordinator, Cabinet for Families and Children, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900, FAX: (502) 564-7573.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Social Insurance, Division of Management and Development, Third Floor West, CHR Building, 275 East Main, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Families and Children's regulations may call toll free 1-800-372-2973 (V/TTY).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the Kentucky Transitional Assistance Program (K-TAP) is KRS 194.050, 205.010, 205.200(2), EO 96-862 and 42 USC 601 et seq.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate will amend 904 KAR 2:035, Right to apply and reapply.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The proposed regulation 904 KAR 2:035, Right to apply and reapply, implements application requirements for the Kentucky Transitional Assistance Program (K-TAP). Pursuant to the approved Title IV-A State Plan as required by 42 USC 601 et seq., confidentiality requirements are changed to coincide with requirements in Kentucky statutes only instead of federal regulations and Kentucky statutes. References to Aid to Families with Dependent Children (AFDC) have been changed to Kentucky Transitional Assistance Program (K-TAP) to conform with the provisions in 904 KAR 2:006E and 2:016E. In addition, we intend to simplify eligibility requirements for Kentucky Transitional Assistance Program (K-TAP).

(d) The benefits expected from administrative regulation are: Public assistance benefits received by needy Kentuckians may be jeopardized if Kentucky does not meet the mandated requirements delineated in Kentucky's Title IV-A State Plan as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. This administrative regulation is needed to comply with the mandated requirements pursuant to our approved Title IV-A State Plan as required by 42 USC 601 et seq. and to conform with the provisions found in 904 KAR 2:006E and 2:016E. Simplification of financial eligibility requirements for the Kentucky Transitional Assistance Program (K-TAP) will reduce the complexities in applying for benefits by the applicant and in making eligibility determinations by the cabinet.

(e) The administrative regulation will be implemented as follows: The Cabinet for Families and Children, the Department for Social Insurance will be responsible for implementing the administrative regulation.

June 1, 1997

Cabinet for Families and Children

Department for Social Insurance

Division of Management and Development

(1) **904 KAR 2:040**, Procedures for determining initial and continuing eligibility.

(2) Cabinet for Families and Children, Department for Social Insurance intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 30,

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1997, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 30, 1997, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Judy Trigg, Regulation Coordinator, Cabinet for Families and Children, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900, FAX: (502) 564-7573.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Social Insurance, Division of Management and Development, Third Floor West, CHR Building, 275 East Main, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Families and Children's regulations may call toll free 1-800-372-2973 (V/TTY).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the Kentucky Transitional Assistance Program (K-TAP) is KRS 194.050(1), 205.010, 205.200(2), EO 96-862 and 42 USC 601 et seq.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate will amend 904 KAR 2:040, Procedures for determining initial and continuing eligibility.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The proposed regulation 904 KAR 2:040, Procedures for determining initial and continuing eligibility implements requirements for the eligibility determination process for the Kentucky Transitional Assistance Program (K-TAP). This administrative regulation is needed to comply with the mandated requirements pursuant to our approved Title IV-A State Plan as required by 42 USC 601 et seq. and to conform with the provisions found in 904 KAR 2:006E and 2:016E. References to Aid to Families with Dependent Children (AFDC) have been changed to Kentucky Transitional Assistance Program (K-TAP) to conform with the provisions in 904 KAR 2:006E and 2:016E. Policy regarding the alternate redetermination plan for recertifications in Section 2 is removed. This policy was the result of the previous AFDC state plan and federal regulations which are now not applicable. The AFDC State Plan has been superseded by the current Title IV-A State Plan for the TANF block grant program. In addition, we intend to simplify eligibility requirements for Kentucky Transitional Assistance Program (K-TAP). We also intend to develop a recertification form to be used during recertification interviews when the Kentucky Automated Management and Eligibility System (KAMES) is down.

(d) The benefits expected from administrative regulation are: K-TAP recipients and new applicants currently required to have a six (6) month recertification period will have a recertification period up to twelve (12) months. Recertification requirements for state supplementation recipients will be changed from twelve (12) months to twenty-four (24) months. This will allow the recipient to undergo a recertification interview less frequently and will reduce visits to the local Department for Social Insurance office. The requirement for the recipient to timely report required changes to the department will not change. Fewer recertifications for K-TAP recipients will enable current departmental staff to have more time to devote to additional required activities as a result of welfare reform changes such as assisting recipients in obtaining employment. Simplification of financial eligibility requirements for the Kentucky Transitional Assistance Program (K-TAP) will reduce the complexities in applying for benefits by the applicant and in making eligibility determinations by the cabinet.

(e) The administrative regulation will be implemented as follows: The Cabinet for Families and Children, the Department for Social Insurance will be responsible for implementing the administrative regulation.

June 1, 1997

Cabinet for Families and Children

Department for Social Insurance

Division of Management and Development

(1) **904 KAR 2:046**, Adverse action, conditions.

(2) Cabinet for Families and Children, Department for Social Insurance intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 30, 1997, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 30, 1997, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Judy Trigg, Regulation Coordinator, Cabinet for Families and Children, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900, FAX: (502) 564-7573.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

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(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Social Insurance, Division of Management and Development, Third Floor West, CHR Building, 275 East Main, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Families and Children's regulations may call toll free 1-800-372-2973 (V/TTY).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the Kentucky Transitional Assistance Program (K-TAP) is KRS 194.050(1), 205.010, 205.200(2), EO 96-862 and 42 USC 601 et seq.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate will amend 904 KAR 2:046, Adverse action, conditions.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The proposed regulation 904 KAR 2:046, Adverse action, conditions implements conditions under which assistance for the Kentucky Transitional Assistance Program (K-TAP) is denied, reduced, or discontinued. References to Aid to Families with Dependent Children (AFDC) have been changed to Kentucky Transitional Assistance Program (K-TAP) to conform with the provisions in 904 KAR 2:006E and 2:016E. In addition, we intend to simplify eligibility requirements for Kentucky Transitional Assistance Program (K-TAP).

(d) The benefits expected from administrative regulation are: This administrative regulation is needed to conform with the provisions found in 904 KAR 2:006E and 2:016E. Simplification of financial eligibility requirements for the Kentucky Transitional Assistance Program (K-TAP) will reduce the complexities in applying for benefits by the applicant and in making eligibility determinations by the cabinet.

(e) The administrative regulation will be implemented as follows: The Cabinet for Families and Children, the Department for Social Insurance will be responsible for implementing the administrative regulation.

June 1, 1997

Cabinet for Families and Children

Department for Social Insurance

Division of Management and Development

(1) **904 KAR 2:050**, Time and manner of payments.

(2) Cabinet for Families and Children, Department for Social Insurance intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 30, 1997, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 30, 1997, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Judy Trigg, Regulation Coordinator, Cabinet for Families and Children, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900, FAX: (502) 564-7573.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Social Insurance, Division of Management and Development, Third Floor West, CHR Building, 275 East Main, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Families and Children's regulations may call toll free 1-800-372-2973 (V/TTY).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the Kentucky Transitional Assistance Program (K-TAP) is KRS 194.050, 205.010, 205.200(2), EO 96-862 and 42 USC 601 et seq.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate will amend 904 KAR 2:050, Time and manner of payments.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: This proposed administrative regulation 904 KAR 2:050, Time and manner of payments, is necessary to implement the payment of benefits requirements for the Kentucky Transitional Assistance Program (K-TAP). References to Aid to Families with Dependent Children (AFDC) have been changed to Kentucky Transitional Assistance Program (K-TAP) to conform with the provisions in 904 KAR 2:006E and 2:016E. 904 KAR 2:006E and the approved Title IV-A State Plan requires a payee for a minor teenage parent determined to be ineligible for Kentucky Transitional Assistance Program (K-TAP) when the minor teenage parent fails to meet the requirements for living in an adult supervised setting. In addition, we intend to simplify eligibility requirements for Kentucky Transitional Assistance Program (K-TAP).

(d) The benefits expected from administrative regulation are: Public assistance benefits received by needy Kentuckians may be jeopardized if Kentucky does not conform with the provisions in 904 KAR 2:006E and 2:016E pursuant to Kentucky's Title IV-A State Plan as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Simplification of financial eligibility requirements for the Kentucky Transitional Assistance Program (K-TAP) will reduce the complexities in applying for benefits by the applicant and in making

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eligibility determinations by the cabinet.

(e) The administrative regulation will be implemented as follows: The Cabinet for Families and Children, the Department for Social Insurance will be responsible for implementing the administrative regulation.

June 1, 1997

Cabinet for Families and Children

Department for Social Insurance

Division of Management and Development

(1) **904 KAR 2:055**. Hearings and appeals.

(2) Cabinet for Families and Children, Department for Social Insurance intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 30, 1997, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 30, 1997, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Judy Trigg, Regulation Coordinator, Cabinet for Families and Children, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900, FAX: (502) 564-7573.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Social Insurance, Division of Management and Development, Third Floor West, CHR Building, 275 East Main, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Families and Children's regulations may call toll free 1-800-372-2973 (V/TTY).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the Kentucky Transitional Assistance Program (K-TAP) is KRS Chapter 13B, 194.050(1), 205.010, 205.200(2), 205.231, 205.237, EO 96-862, 45 CFR 205.10, 251.5 and 42 USC 601 et seq.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate will amend 904 KAR 2:055, Hearings and appeals.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The proposed regulation 904 KAR 2:055, Hearings and appeals, implements the system of hearing provisions for the Kentucky Transitional Assistance Program (K-TAP). References to Aid to Families with Dependent Children (AFDC) have been changed to Kentucky Transitional Assistance Program (K-TAP), and references to the Job Opportunities and Basic Skills (JOBS) Program have been changed to the Kentucky Works Program, to conform with the provisions in 904 KAR 2:006E and 2:016E. We intend to continue child care and supportive services payments, for timely requests of continuation of benefits when a hearing is requested, during the period pending a hearing decision. In addition, we intend to simplify eligibility requirements for Kentucky Transitional Assistance Program (K-TAP).

(d) The benefits expected from administrative regulation are: Continuation of child care and supportive services payments pending a hearing decision will be additional benefits to recipients during the period the hearing decision is pending. Continuation (for timely requests for a hearing) of child care and transportation payments pending a hearing request will help the recipient stay employed while waiting for a hearing request. Simplification of financial eligibility requirements for the Kentucky Transitional Assistance Program (K-TAP) will reduce the complexities in applying for benefits by the applicant and in making eligibility determinations by the cabinet.

(e) The administrative regulation will be implemented as follows: The Cabinet for Families and Children, the Department for Social Insurance will be responsible for implementing the administrative regulation.

June 1, 1997

Cabinet for Families and Children

Department for Social Insurance

Division of Management and Development

(1) **904 KAR 2:060**. Delegation of power for oaths and affirmations.

(2) Cabinet for Families and Children, Department for Social Insurance intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 30, 1997, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 30, 1997, the public hearing will be cancelled.

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(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Judy Trigg, Regulation Coordinator, Cabinet for Families and Children, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900, FAX: (502) 564-7573.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Social Insurance, Division of Management and Development, Third Floor West, CHR Building, 275 East Main, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Families and Children's regulations may call toll free 1-800-372-2973 (V/TTY).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the Kentucky Transitional Assistance Program (K-TAP) is KRS 194.050, 205.010, 205.170, 205.200(2), EO 96-862 and 42 USC 601 et seq.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate will amend 904 KAR 2:060, Delegation of power for oaths and affirmations.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The proposed regulation 904 KAR 2:060E, Delegation of power for oaths and affirmations, implements the designation of certain cabinet employees to administer oaths and affirmations for the Kentucky Transitional Assistance Program (K-TAP). Time limitations for the replacement of a lost or stolen check is set at six (6) months from the date of intended receipt. References to Aid to Families with Dependent Children (AFDC) have been changed to Kentucky Transitional Assistance Program (K-TAP) to conform with the provisions in 904 KAR 2:006E and 2:016E. In addition, we intend to simplify eligibility requirements for Kentucky Transitional Assistance Program (K-TAP).

(d) The benefits expected from administrative regulation are: This administrative regulation is needed to conform with the provisions found in 904 KAR 2:006E and 2:016E. Simplification of financial eligibility requirements for the Kentucky Transitional Assistance Program (K-TAP) will reduce the complexities in applying for benefits by the applicant and in making eligibility determinations by the cabinet.

(e) The administrative regulation will be implemented as follows: The Cabinet for Families and Children, the Department for Social Insurance will be responsible for implementing the administrative regulation.

CABINET FOR HEALTH SERVICES Department for Medicaid Services

June 15, 1997

Cabinet for Health Services

Department for Medicaid Services

(1) **907 KAR 1:060**, Medical transportation.

(2) Cabinet for Health Services, Department for Medicaid Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 30, 1997, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 30, 1997, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Medicaid Services, Division of Administration and Development, CHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to medical transportation is KRS 194.050.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:060 to revise and clarify definitions, to make formatting and drafting amendments in order to comply with KRS Chapter 13A, to make minor clarifications to current policy, and to include managed care provisions.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth

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the provisions relating to the service of transportation for access to medical services for which payment shall be made by the Medicaid Program on behalf of both the categorically needy and the medically needy.

(d) The benefits expected from administrative regulation are: To revise and clarify licensure requirements and restrictions to comply with appropriate licensing agency requirements.

(e) The administrative regulation will be implemented as follows: By the Division of Administration and Development, Department for Medicaid Services, Cabinet for Health Services.

May 15, 1997

Cabinet for Health Services

Department for Medicaid Services

(1) **907 KAR 1:061**, Payments for medical transportation.

(2) Cabinet for Health Services, Department for Medicaid Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 30, 1997, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 30, 1997, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Medicaid Services, Division of Administration and Development, CHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to payments for medical transportation are KRS 194.050.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:061 to revise and clarify definitions, revise and clarify licensure requirements and restrictions to comply with appropriate licensing agency requirements, revise and update the Medicaid Transportation Services Manual for emergency services, revise and update payment methodology, to make drafting and formatting changes in order to comply with KRS Chapter 13A, make minor clarifications to current policy, and to include managed care provisions.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth the method for determining amounts payable by the Department for Medicaid Services for medical transportation services.

(d) The benefits expected from administrative regulation are: Clarify policy related to licensure requirements and payment.

(e) The administrative regulation will be implemented as follows: By the Division of Administration and Development, Department for Medicaid Services, Cabinet for Health Services.

June 15, 1997

Cabinet for Health Services

Department for Medicaid Services

(1) **907 KAR 1:360**, Preventive and remedial health care services provided through interagency agreement.

(2) Cabinet for Health Services, Department for Medicaid Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 30, 1997, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 30, 1997, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

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2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Medicaid Services, Division of Administration and Development, CHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to preventive health services are KRS 194.050 and EO 96-862.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:360, to revise and update the EPSDT periodicity schedule, update the name and policy information of the Preventive Health Services Manual, incorporate EO 96-862 and KRS Chapter 13A formatting requirements, make other minor policy clarifications, and include managed care provisions relating to preventive health services.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth coverage and payment conditions for preventive public health services provided through interagency agreement.

(d) The benefits expected from administrative regulation are: Update and clarify policy information.

(e) The administrative regulation will be implemented as follows: By the Division of Administration and Development, Department for Medicaid Services, Cabinet for Health Services.

June 15, 1997

Cabinet for Health Services

Department for Medicaid Services

(1) **907 KAR 1:383**, Repealer of 907 KAR 1:382, Incorporation by reference of the Preventive Health Services Manual.

(2) Cabinet for Health Services, Department for Medicaid Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 30, 1997, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 30, 1997, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Medicaid Services, Division of Administration and Development, CHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to incorporation by reference of the Preventive Health Services Manual are KRS 194.050 and EO 96-862.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will repeal 907 KAR 1:382, Incorporation by reference of the preventive health services manual, which is now obsolete.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation acts to repeal 907 KAR 1:382.

(d) The benefits expected from administrative regulation are: To eliminate any conflict between obsolete and current material.

(e) The administrative regulation will be implemented as follows: By the Division of Administration and Development, Department for Medicaid Services, Cabinet for Health Services.

June 15, 1997

Cabinet for Health Services

Department for Medicaid Services

(1) **907 KAR 1:429**, Repeal of 907 KAR 1:428 and 907 KAR 1:432

(2) Cabinet for Health Services, Department for Medicaid Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 30, 1997 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort,

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Kentucky, 40621.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 30, 1997, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Medicaid Services, Division of Administration and Development, CHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (VTDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to repealing another administrative regulation are KRS 194.050 and 13A.310.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will repeal 907 KAR 1:428, Incorporation by reference of the Adult Day Health Care Services Manual and 907 KAR 1:432, Incorporation by reference of the Home and Community Based Waiver Services Manual.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation acts specifically to repeal 907 KAR 1:428, Incorporation by reference of the Adult Day Health Care Services Manual and 907 KAR 1:432, Incorporation by reference of the Home and Community Based Waiver Services Manual which have been combined and incorporated by reference in 907 KAR 1:160.

(d) The benefits expected from administrative regulation are: To remove obsolete material.

(e) The administrative regulation will be implemented as follows: By the Division of Administration and Development, Department for Medicaid Services, Cabinet for Health Services.

June 15, 1997

Cabinet for Health Services

Department for Medicaid Services

(1) **907 KAR 1:560**, Medicaid hearings and appeals for recipients.

(2) Cabinet for Health Services, Department for Medicaid Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 30, 1997 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky, 40621.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 30, 1997, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Medicaid Services, Division of Administration and Development, CHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (VTDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to Medicaid hearings and appeals for recipients are KRS 194.025, 194.050 and EO 96-862.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:560, Medicaid hearings and appeals for recipients, to incorporate the complaint, grievance and appeal process for recipients enrolled in a managed care partnership and to clarify policy.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth

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the addition of the complaint, grievance and appeal process made available to those recipients who are enrolled in a managed care partnership.

(d) The benefits expected from administrative regulation are: To provide for a recipient complaint, grievance and appeal process upon implementation of 907 KAR 1:705.

(e) The administrative regulation will be implemented as follows: By the Division of Administration and Development, Department for Medicaid Services, Cabinet for Health Services.

June 15, 1997

Cabinet for Health Services

Department for Medicaid Services

(1) 907 KAR 3:005, Physicians' services; 907 KAR 3:010, Reimbursement for physicians' services.

(2) Cabinet for Health Services, Department for Medicaid Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 30, 1997 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky, 40621.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 30, 1997, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Medicaid Services, Division of Administration and Development, CHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (VTDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to physician services are KRS 194.050, 42 CFR 440.50, 447 Subpart B, 42 USC 1396a-d, 1396s, and EO 96-862.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 3:005 and 907 KAR 3:010 to comply with provisions of EO 96-862 and KRS Chapter 13A; to update current procedural terminology (CPT) codes; make minor policy clarifications and updates; incorporate new policy related to new coverage of certain injectable prescriptions and implant procedures; incorporate policy related to new coverage of Early Periodic Screening Diagnosis and Treatment (EPSDT) screenings; incorporate new policy related to pharmacy services; to clarify policy related to Kentucky Patient Access and Care System (KenPAC) providers' reimbursement regarding coinsurance; incorporate policies related to KenPAC; to amend policy related to physician provider enrollment regarding Form 343B; to amend policy related to attending physicians in a teaching hospital regarding attending physicians' reimbursement; to update policy on Obstetrical and Gynecological Services (OB-GYN) pursuant to federal and state judicial opinion; to make minor clarifications to current policy such as physician-patient contact and cross reference the partnership regulations 907 KAR 1:705 and 907 KAR 1:710.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: 907 KAR 3:010 sets forth the method for establishing reimbursements for physician services; 907 KAR 3:005 sets forth the provisions relating to physicians' services for which payment shall be made by the Medicaid Program on behalf of both the categorically needy and the medically needy.

(d) The benefits expected from administrative regulation are: Incorporation of new policy; clarification and update of existing policy; improve physicians' services provided to Medicaid recipients and primary care physicians through the use of a current and complete physician's manual.

(e) The administrative regulation will be implemented as follows: By the Division of Administration and Development, Department for Medicaid Services, Cabinet for Health Services.

EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

(NOTE: Emergency administrative regulations expire 170 days from publication or upon replacement, repeal, or withdrawal)

STATEMENT OF EMERGENCY
502 KAR 45:145E

Current budget deficit will prevent the department from awarding merit pay to qualifying officers. This emergency administrative regulation will allow the commissioner to grant forty (40) additional hours of annual leave in lieu of the percentage cash award to all qualifying officers who begin the testing cycle in April 1997. This immediate amendment will allow the agency to continue this beneficial program, result in a further cost savings, and continue the increased efficiency recognized by this program in prior years. This administrative regulation will be replaced by an ordinary administrative regulation to be filed with the Regulations Compiler.

PAUL E. PATTON, Governor
GARY W. ROSE, Commissioner

JUSTICE CABINET
Department of State Police

502 KAR 45:145E. Merit Pay Program.

RELATES TO: KRS 16.040, 16.050, 16.080
STATUTORY AUTHORITY: KRS 16.040(1)
EFFECTIVE: June 3, 1997

NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.050 sets forth the compensation provisions for officers of the Department of State Police. KRS 16.040 and 16.080 vests in the commissioner the authority to adopt administrative regulations relating to the compensation of officers. This administrative regulation establishes the procedure to be used to provide a merit pay program for officers of the Department of State Police.

Section 1. The Commissioner of the Department of State Police may utilize up to fifty (50) percent of funds saved through a combination of high performance levels and staff reduction to grant merit pay awards to officers. Merit pay awards shall be contingent upon the availability of surplus funds within the commissioner's budget and shall be within the sole discretion of the commissioner. A merit pay award shall equal two (2) percent of the officer's annual salary and shall be paid in a lump sum. In the alternative the commissioner may award officers forty (40) additional hours of annual leave.

Section 2. The officer shall meet ~~meets~~ the following standards:

- (1) Attainment of physical fitness standards.
- (2) No more than one (1) accident during the twelve (12) month period involving a state police vehicle in which the officer was at fault.
- (3) No disciplinary action resulting in an official written reprimand, reduction in pay or grade, or involuntary suspension from duty with or without pay.
- (4) No more than forty (40) sick hours taken during the twelve (12) month period, excluding absences due to duty related injuries.
- (5) An officer shall have received an overall average rating of "above standard" (ninety (90) percent or more) on the officer inspection reports completed during each twelve (12) month evaluation period.

Section 3. An officer shall be eligible for only one (1) merit pay award or award of forty (40) hours annual leave in a twelve (12) month period.

Section 4. In order to grant a merit pay award, the commissioner shall submit the personnel action form and written justification.

GARY W. ROSE, Commissioner
APPROVED BY AGENCY: April 21, 1997
FILED WITH LRC: June 3, 1997 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jean Ann Gabbard

(1) Type and number of entities affected: All sworn officers of the Department of State Police.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None anticipated.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None seen.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition): No significant compliance, reporting or paperwork changes are anticipated.

1. First year following implementation: Not applicable.

2. Second and subsequent years: Not applicable.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No significant savings or costs anticipated.

1. First year: Not applicable.

2. Continuing costs or savings: Not applicable.

3. Additional factors increasing or decreasing costs: Not applicable.

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues: No significant impact is seen.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current, budgeted funds are to be used for implementation. There are no enforcement costs.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: There is no economic impact anticipated at this time.

(a) Geographical area in which administrative regulation will be implemented: Not applicable.

(b) Kentucky: Not applicable.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were proposed.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No public health or environmental impact seen.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) Identify any statute, administrative regulation or government policy which may in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

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(10) Any additional information or comments: This amendment is designed to permit appointing authorities greater flexibility in regarding employees for performance and to enable them to be more competitive in recruiting and retaining highly qualified employees.

(11) Tiering: Is tiering applied? No. This regulation applies only to sworn officers of the department of state police.

STATEMENT OF EMERGENCY

603 KAR 5:070E

The Transportation Cabinet is required by Title 23 Code of Federal Regulations Part 658 to allow increased dimension vehicles reasonable access to terminals and facilities for food, fuel, repairs, and rest from the highways designated for use by increased dimension vehicles. Increased dimension vehicles have semitrailers wider than eight (8) feet; have an overall length greater than sixty-five (65) feet for a combination truck and trailer or semitrailer; or are operated in a tractor-semitrailer-trailer combination, not to exceed two (2) twenty-eight (28) feet long trailers per truck. The maximum reasonable access driving distance on state-maintained highways in Kentucky is five (5) miles. However, 23 CFR Part 658.19 allows a state to identify specific highway segments within the reasonable access driving distance which are deemed unsafe for the operation of an increased dimension motor vehicle. In Fayette County, many operators of increased dimension vehicles are exiting the interstate highway seeking an alternate route to avoid the construction on I-75. At the interchange with I-75, KY 418 is a wide and safe-looking highway. Less than one-half (1/2) mile southeast of I-75, there is an industrial park, and a short distance past the industrial park entrance, KY 418 reduces to eight (8) - nine (9) foot wide lanes with minimal shoulders and poor alignment, conditions which are deemed inadequate for use by increased dimension vehicles. Beyond the industrial park there are no facilities likely to be destinations for commercial motor carriers. KY 418 intersects KY 1973 within the five (5) mile reasonable access driving distance, and KY 1973 is also deemed inadequate for the operation of the increased dimension vehicles. Therefore, a safe route back to a highway designated for use by increased dimension vehicles does not exist once the industrial park entrance is passed. The use of these roadways with inadequate geometric features by increased dimension vehicles constitutes an emergency. The operators of increased dimension vehicles need to be immediately provided with notice of the unsafe conditions, prohibited from operating on KY 1973, and allowed to only use KY 418 southeast of I-75 to access the industrial park. An ordinary administrative regulation is not sufficient because the 1997 construction season would be over by the time an ordinary amendment to 603 KAR 5:070 could take effect. In order to ensure the safety of the traveling public, KY 418 and KY 1973 need to be immediately identified as highways unsafe for operation of increased dimension vehicles and signs posted prohibiting use by these large vehicles. The emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regulation was filed with the Regulations Compiler on May 19, 1997.

PAUL E. PATTON, Governor
JAMES C. CODELL, III, Secretary

TRANSPORTATION CABINET
Department of Highways
Division of Transportation Planning
Department of Vehicle Regulation
Division of Motor Carriers
Division of Motor Vehicle Enforcement

603 KAR 5:070E. Motor vehicle dimension limits.

RELATES TO: KRS 189.222, 23 CFR Part 658

STATUTORY AUTHORITY: KRS 189.222(1), 23 CFR Part 658

EFFECTIVE: May 19, 1997

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189.222 authorizes the Secretary of Transportation to establish reasonable size limits for motor vehicles using the State Primary Road System, that is, the ~~[-The State Primary Road System consists of these]~~ roads maintained by the Department of Highways. Further, 23 CFR Part 658 requires that a reasonable access on state-maintained highways and locally controlled highways be included with the list of highways over which motor vehicles with increased dimensions shall be allowed to operate. The federal regulation strongly suggests that the states allow the motor vehicles with increased dimensions to operate with a gross weight of up to 80,000 pounds (36,287.36 kilograms) where the motor vehicles with increased dimensions are allowed. The federal regulation also requires that vehicles with increased dimensions which are transporting household goods and truck tractors towing only one (1) semitrailer which does not exceed twenty-eight (28) feet (8.53 meters) be provided statewide access unless a route is specifically excluded for safety reasons. This administrative regulation is adopted to set the maximum motor vehicle and combination vehicle dimensions for all classes of highways. The federal regulation 23 CFR Part 658 sets forth the highways which shall be available for vehicles with increased dimensions. This administrative regulation includes each of these highways as well as others which have been constructed to accommodate the motor vehicles with increased dimensions. In addition, 23 CFR 658.19 requires each state to allow the increased dimension vehicles to operate a minimum of one (1) mile from the designated highways. On state-maintained highways in Kentucky, the increased dimension vehicles are allowed to be operated for five (5) miles from a designated highway. However, bus dimension limits are set forth in 603 KAR 5:071.

Section 1. Definitions. (1) "Length exclusion safety device" means an appurtenance at the front or rear of a motor vehicle semitrailer or trailer whose function is related to the safe and efficient operation of the semitrailer or trailer and shall not be designated, designed or used for carrying cargo.

(2) "Width exclusion safety device" means an appurtenance at the side of a motor vehicle semitrailer or trailer whose function is normally related to the safe and efficient operation of the semitrailer or trailer and shall not be designated, designed or used for carrying cargo.

Section 2. (1) The following items shall be designated as width exclusion safety devices:

- (a) Rearview mirrors;
- (b) Turn signal lamps;
- (c) Hand holds for cab entry or egress;
- (d) Splash and spray suppressant devices; and
- (e) Load induced tire bulge.

(2) The following items shall be designated as width exclusion safety devices as long as they do not extend beyond three (3) inches (0.0762 meters) on either side of the vehicle:

- (a) Corner cap;
- (b) Rear and side door hinges and their protective hardware;
- (c) Rain gutters;
- (d) Side marker lamps;
- (e) Lift pads for piggyback trailers;

- (f) Hazardous materials placards;
- (g) Tarp and tarp hardware;
- (h) Tie-down assembly on platform trailers;
- (i) Wall variation from true flat; and
- (j) Weevil pins and sockets on low bed trailers.

Section 3. Except as provided in Section 4 of this administrative regulation, the maximum dimensions for all motor vehicles and combination vehicles except buses using all classes of highways shall be as follows:

- (1) Height: including body and load, not to exceed thirteen (13) feet and six (6) inches (4.115 meters).
- (2) Width: including body and load, not to exceed eight (8) feet (2.44 meters), excluding any width exclusion safety device.
- (3) Length. The maximum lengths listed below shall not include length exclusion safety devices:
 - (a) The length of a single unit motor vehicle, including any part of the body or load, shall not exceed forty-five (45) feet (13.716 meters).
 - (b) A single unit motor vehicle transporting utility poles or pipes in which the vehicle and load do not exceed forty-five (45) feet (13.716 meters) shall not be required to obtain an overdimensional permit.
 - (c) If the front or rear overhang of a single unit motor vehicle exceeds five (5) feet (1.524 meters), an overdimensional permit shall be obtained prior to the operation of the vehicle.
 - (d) A motor vehicle and trailer or semitrailer combination, including any part of the body or load, shall not exceed sixty-five (65) feet (19.812 meters).
 - (e) If a truck tractor or semitrailer unit is exclusively engaged in the transportation of motor vehicles or boats, a three (3) foot (0.914 meters) front and four (4) foot (1.22 meters) rear overhang shall not be included in the measurement of the sixty-five (65) feet (19.812 meters) limit established in paragraph (d) of this subsection.
- (4) Weight.
 - (a) The gross weight limit for each highway segment is set forth in 603 KAR 5:301.
 - (b) The axle weight limit and the bridge weight formula are set forth in 603 KAR 5:066.

Section 4. (1) Motor vehicles or combination vehicles except buses with dimensions greater than those specified in Section 3 of this administrative regulation but which do not exceed the dimensions set forth in subsection (2) of this section may be operated without an overweight or overdimensional permit only on the highways listed in Section 5(1) of this administrative regulation, on the five (5) mile (8.05 kilometers) access authorized in Section 5(2) of this administrative regulation, and on the one (1) mile (1.61 kilometers) access authorized in Section 5(3) of this administrative regulation.

(2) Motor vehicles shall not exceed, without an overdimensional permit, the following width and length dimensions when operating on those highways listed in Section 5(1) of this administrative regulation:

- (a) Width - 102 inches (2.59 meters) including any part of the body or load except for width exclusion devices.
- (b) Length.
 - 1. Semitrailers - excluding length exclusion devices, fifty-three (53) feet (16.154 meters) including body and load when operated in tractor semitrailer combination.
 - 2. Trailers - excluding length exclusion safety devices, twenty-eight (28) feet (8.53 meters) including body and load when operated in a tractor-semitrailer-trailer combination, not to exceed two (2) trailers per truck tractor. Twenty-eight (28) feet (8.53 meters), excluding length exclusion safety devices, shall be the maximum length of a trailer including body and load when operated in a truck-trailer combination.
 - 3. If the load overhangs the body of the trailer or semitrailer by more than five (5) feet (1.524 meters) an overdimensional permit shall be required regardless of the overall length of the unit, except in truck

tractor and semitrailer units exclusively engaged in the transportation of motor vehicles or boats, a three (3) foot (0.914 meters) front and four (4) foot (1.22 meters) rear overhang of the transported vehicles or boats shall be excluded in the measurement.

4. There shall be no overall length limitation on motor vehicles operating on highways listed in Section 5(1) of this administrative regulation or on the five (5) mile (8.05 kilometers) local access authorized in Section 5(2) of this administrative regulation as long as the requirements set forth in this subsection are met.

5. In a tractor semitrailer-trailer combination vehicle in which the two (2) trailing units are connected with a rigid frame extension attached to the rear frame of the first semitrailer which allows for a fifth wheel connection point for the second semitrailer, the length of the extension shall be excluded from the measurement of semitrailer length; however, when there is no second semitrailer mounted to the fifth wheel, the length of the extension shall be included in the length measurement for the semitrailer.

(3) The gross vehicle weight limit for each of the highway segments set forth in Section 5 of this administrative regulation shall be 80,000 pounds (36,287.36 kilograms) except the axle weight limits and bridge weight limits set forth in 603 KAR 5:066 shall not be exceeded.

(4) The dimensions and weights specified in this section shall not be subject to any enforcement tolerances provided in any other section.

Section 5. (1) The following highways are designated to permit the operation of motor vehicles with increased dimensions but which do not exceed the limitations stated in Section 4(2) of this administrative regulation:

- The Interstate and National Defense Highway System.
- Audubon Parkway - from Pennyrlle Parkway at Exit 77 in Henderson to US 60 Bypass in Owensboro.
- Bluegrass Parkway - from I-65 at Exit 93 in Elizabethtown to US 60 near Versailles.
- Cumberland Parkway - from I-65 at Exit 43 near Smiths Grove to US 27 west of Somerset.
- Daniel Boone Parkway - from US 25 north of London to KY 15 north of Hazard.
- Green River Parkway - From I-65 at Exit 20 in Bowling Green to US 60 Bypass in Owensboro.
- Jackson Purchase Parkway - from Tennessee state line to US 62 in Marshall County.
- Mountain Parkway and Extension - from I-64 at Exit 98 in Winchester to US 460 at Salyersville.
- Pennyrlle Parkway - From US 41A south of Hopkinsville to US 41 near Henderson.
- Western Kentucky Parkway - from I-24 at Exit 42 south of Eddyville to US 31W/KY 61 in Hardin County.
- KY 1 - From the I-64 ramps south of the I-64 interchange at Exit 172 to KY 9 north of I-64 all in Carter County.
- KY 3 - From the junction with US 23 at Auxier to the junction with KY 645 south of Inez.
- KY 4 - The entire circle of Lexington.
- KY 8 - From the junction with KY 19 at Augusta in Bracken County to a point one (1) mile east of the junction with KY 1597 in Mason County.
- KY 9 - From the junction with KY 1 in Carter County to the junction with I-275 at Exit 77 in Kenton County.
- KY 11 - from the junction with KY 32 in Fleming County to US 62/68 in Maysville.
- KY 15 - from US 119 in Whitesburg to KY 15 Spur/KY 191 at Campton, via KY 7 in Letcher County.
- KY 15 Spur - From KY 15/KY 191 to the Mountain Parkway at Exit 43.
- KY 18 - from KY 237 northwest of Florence to KY 1017 in Florence.

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- KY 19 - From the junction with KY 9 to the junction with KY 8 at Augusta.
- KY 21 - from I-75 at Exit 76 near Berea to US 25 south in Berea.
- US 23 - from the Virginia state line to US 119 near Jenkins.
- US 23 - From the junction with KY 610 at Dorton to the south end of the U.S. Grant Bridge at South Portsmouth.
- US 23 Spur - from US 60 in Ashland to the Ohio state line.
- US 25 - from KY 461 in Rockcastle County to I-75 at Exit 62 in Rockcastle County.
- US 25/421 - from US 421 south of Richmond to KY 876 in Richmond.
- US 25/421 - from KY 418 southeast of Lexington via KY 4 to Nandino Boulevard in Lexington.
- US 25 - from US 42 in Florence to Ohio State Line.
- US 25E - from Virginia state line to I-75 at Exit 29 north of Corbin.
- US 27 - from Tennessee state line to the Ohio State Line (via KY 4 in Lexington).
- US 31E - from Tennessee state line to KY 90 at Glasgow (via the Scottsville Bypass and the Glasgow Bypass).
- US 31E/150 - From the junction with I-265 at Exit 17 in southeast Jefferson County to the junction with I-264 at Exit 16.
- US 31W - from Tennessee state line to KY 255 in Park City, via KY 1008 in Simpson County.
- US 31W - from US 31W Bypass in Elizabethtown to I-264 at Exit 8 in Louisville.
- US 31W Bypass - from Western Kentucky Parkway at Exit 136 to US 31W in Elizabethtown.
- KY 32 - from KY 11 in Fleming County to I-64 at Exit 137 at Morehead.
- KY 35 - from US 127 at Bromley to I-71 at Exit 57 north of Sparta.
- KY 36 - from the Kawneer Corporation Plant Road in Carroll County (running concurrently with US 42 in Carrollton) to KY 227.
- US 41 - from US 68 (Main Street) in Hopkinsville to US 68 (McLean Avenue) in Hopkinsville.
- US 41 - from Pennyriple Parkway at Henderson to Indiana state line.
- US 41A - from Tennessee state line to Pennyriple Parkway at south city limits of Hopkinsville.
- US 41A - From Wanamaker Road north of Dixon in Webster County (milepoint 11.524) to KY 425, the Henderson Bypass in Henderson County.
- US 42 - from I-75 at Exit 180 in Florence to US 25 in Florence.
- US 42 - from KY 36 in Carroll County at milepoint 4.519 (running concurrently with KY 36 for 2.699 miles) north to KY 47 at Ghent.
- US 45 - from the Jackson Purchase Parkway north of Mayfield to US 60 in Paducah.
- US 49 - Concurrent with KY 55 south of Lebanon to north of Lebanon.
- US 51 - from Jackson Purchase Parkway at Exit 1 in Fulton County to Illinois state line.
- KY 52 - from KY 876 in Richmond to KY 499 at Irvine.
- KY 55 - from Cumberland Parkway at Exit 49 in Columbia to US 150 at Springfield, via US 68 and KY 49.
- US 60 - from US 51 in Wickliffe via US 45 in McCracken County to US 62 east of Paducah.
- US 60 - from KY 109 at Sullivan in Union County to KY 425, the Henderson Bypass.
- US 60 - from KY 1554 to US 60B, the Owensboro Bypass, all in Daviess County.
- US 60 - from US 60 Bypass east of Owensboro to KY 69 at Hawesville.
- US 60 - from KY 144 at Hog Wallow to US 31W at Tip Top, all in Meade County.
- US 60 - from US 421/460 at Frankfort to I-75 at Exit 110 near Lexington (via Versailles and KY 4 in Lexington).
- US 60 - from junction of KY 180 near Cannonsburg to US 23 in Ashland.
- US 60 Bypass - from US 60 west of Owensboro to US 60 east of Owensboro.
- KY 61 - from Tennessee state line to KY 90 at Burkesville.
- KY 61 - from the junction with US 31E in Hodgenville to US 31W in Elizabethtown.
- US 62 - from I-24 at Exit 7 in Paducah to US 45 in Paducah.
- US 62 - from US 60 east of Paducah to US 68, all in McCracken County.
- US 62 - from KY 341 northeast of Midway to US 421 in Scott County, concurrent with US 421.
- US 62 - from US 68 at Washington to the Ohio state line at Maysville, all in Mason County.
- US 68 - from US 62 at Reidland to the south ramps of I-24 at Exit 16, all in McCracken County.
- US 68 - from I-24 at Exit 65 in Trigg County to Green River Parkway at Exit 5 at Bowling Green via US 41 in Hopkinsville.
- US 68 - from KY 55 southwest of Campbellsville to KY 55 in Lebanon.
- US 68 - from its east intersection with US 150 in Perryville to its west intersection with US 150 in Perryville.
- US 68 - from US 127 south in Harrodsburg to US 127 north in Harrodsburg.
- US 68 - from US 27 at Paris to US 62 at Washington (via Paris Bypass).
- KY 69 - from US 60 at Hawesville to Indiana state line.
- KY 70 - from I-65 at Exit 53 west of Cave City to KY 90 southeast of Cave City.
- KY 79 - from KY 1051 in Brandenburg to Indiana state line.
- KY 80 - from KY 80B east of Somerset to US 25 north of London.
- KY 80 - from KY 15 north of Hazard to US 23 at Watergap.
- KY 80 - from the south ramps of the Daniel Boone Parkway at Exit 20 to US 421 near Manchester.
- KY 80B - From US 27 at Somerset to KY 80 east of Somerset.
- KY 90 - from KY 70 at Cave City to US 31E north of Glasgow.
- KY 90 - from KY 61 at Burkesville to US 27 at Burnside.
- KY 109 - from KY 670 in Webster County to US 60 in Union County.
- KY 114 - from US 460 east of Salyersville to US 23/460 at Prestonsburg.
- KY 118 - from US 421 and KY 80 northwest of Hyden to the Daniel Boone Parkway at Exit 44.
- US 119 - from KY 15 east of Whitesburg to US 23 near Jenkins.
- US 119 - from US 25E south of Pineville to US 421 at Harlan.
- US 119 - from US 23 at Pikeville to KY 1441 northeast of Pikeville.
- KY 121 - from the Jackson Purchase Parkway at Exit 24, at Mayfield to US 51 in Wickliffe.
- US 127 - from KY 90 west to KY 90 east in Clinton County (concurrent with KY 90).
- US 127 - from the Cumberland Parkway at Exit 62 in Russell County north to the junction with US 127 Bypass and US 150 Bypass in Danville.
- US 127 - from US 127 Bypass north of Danville to US 127 Bypass south of Lawrenceburg.
- US 127 - from US 127 Bypass north of Lawrenceburg to US 421 in Frankfort.
- US 127 - from KY 22 in Owenton to KY 35 at Bromley.
- US 127 Bypass - from US 127 south of Danville to US 127 north of Danville.
- US 127 Bypass - from US 127 south of Lawrenceburg to US 127 north of Lawrenceburg.
- KY 144 - from KY 448 south of Brandenburg to US 60.
- US 150 - from US 62 at Bardstown to US 27 at north city limits of Stanford (via US 68 in Perryville and via the US 150 Bypass in Danville).
- US 150B - from US 127 south of Danville to US 150 east of

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Danville.

US 150 Bypass - from US 150 at northern city limits of Stanford to US 27, all in Lincoln County.

KY 151 - from US 127 near Lawrenceburg to I-64 at Exit 48 near Graefenburg.

KY 180 - from I-64 at Exit 185 near Cannonsburg to US 60 at Cannonsburg.

KY 191 - from KY 205 north to KY 205 south in Wolfe County, concurrent with KY 205.

KY 192 - from I-75 at Exit 38 south of London to Daniel Boone Parkway east of London.

KY 205 - from Mountain Parkway at Helechawa to US 460 west in Morgan County, concurrent with KY 191.

KY 212 - from the Greater Cincinnati Airport to KY 20, all in Boone County.

KY 227 - from I-71 at Exit 44 to KY 36 at Carrollton.

US 231 - from US 60 Bypass in Owensboro to Indiana state line.

KY 236 - from US 25 at Erlanger to KY 212 near the Greater Cincinnati Airport.

KY 237 - from KY 18 east of Burlington to I-275 at Exit 7 in Boone County.

KY 245 - from US 150 east of Bardstown to I-65 at Exit 112 south of Shepherdsville.

KY 255 - from US 31W (2nd Street) in Park City to the I-65 interchange northwest ramps at Exit 48.

KY 259 - from Western Kentucky Parkway at Exit 107 to US 62 in Leitchfield.

KY 341 - from US 62/421 near Midway north to I-64 at Exit 65.

KY 348 - from Jackson Purchase Parkway at Exit 43 west of Benton to US 641 in Benton.

KY 418 - from US 25 south of Lexington to I-75 at Exit 104.

US 421 - from 0.1 mile south of Harlan Appalachian Regional Hospital.

US 421 - from Daniel Boone Parkway at Exit 20 to KY 2438 (2nd Street) in Manchester.

US 421 - from KY 4 in Lexington to US 62 east in Scott County.

US 421 - from US 60/460 in Frankfort to US 127 north.

US 421 - from KY 55 south of Newcastle in Henry County to I-71 at Exit 34 west of Campbellsburg.

KY 425 - from US 60 at Henderson to the Pennyryle Parkway at Exit 76.

US 431 - from US 60 Bypass in Owensboro to US 60 (4th Street) in Owensboro.

KY 446 - from US 31W northeast of Bowling Green to I-65 at Exit 28.

KY 448 - from KY 144 to KY 1051 at Brandenburg.

US 460 - from I-64 at Exit 110 north of Mt. Sterling to KY 686.

US 460 - from Mountain Parkway Extension at Exit 75 to US 23 near Paintsville.

KY 461 - from KY 80 in Pulaski County to US 25 north of Mt. Vernon in Rockcastle County.

KY 471 - from US 27 in Campbell County to the I-275/471 interchange at Exit 1.

KY 555 - from US 150 at Springfield to Bluegrass Parkway at Exit 42.

KY 627 - from I-75 interchange at Exit 95 in Madison County to the junction with KY 1958 (Winchester Bypass) in Clark County.

US 641 - from Tennessee state line to KY 348 in Marshall County.

US 641 Spur - from US 641 south of Benton to the Jackson Purchase Parkway at Exit 41.

KY 645 - from US 23 south of Ulysses to KY 3 south of Inez.

KY 676 - from US 127 in west Frankfort to US 60 in east Frankfort.

KY 686 - from US 460 north of Mt. Sterling to KY 11 south of Mt. Sterling.

KY 841 - from US 31W (Dixie Highway) in southwestern Jefferson

County to I-65 at Exit 125.

KY 841 - from I-71 at Exit 9 in Jefferson County to US 42 northeast of Louisville.

KY 876 - from I-75 at Exit 87 at Richmond to KY 52 east of Richmond.

KY 922 - from KY 4 in Lexington north to I-64 and I-75 at Exit 115.

KY 1008 - from US 31W in south Franklin to US 31W in north Franklin.

KY 1017 - from US 25 in Florence to I-75 at Exit 182.

KY 1051 - from KY 448 south of Brandenburg to KY 79.

KY 1597 - From KY 3056 northwest of Maysville to KY 8 all in Mason County.

KY 1682 - from US 68 west of Hopkinsville to Pennyryle Parkway at Exit 12.

KY 1958 - from KY 627 south of Winchester to I-64 at Exit 94 at Winchester.

KY 1998 - from US 27 at Cold Springs to KY 8 near Silver Grove.

(2) Motor vehicles with the increased dimensions specified in Section 4 of this administrative regulation shall be allowed five (5) driving miles (8.05 kilometers) on state maintained highways from the highway segments specified in subsection (1) of this section for the purpose of attaining reasonable access to terminals, facilities for food, fuel, repairs and rest.

(3) Motor vehicles with the increased dimensions specified in Section 4 of this administrative regulation shall be allowed one (1) driving mile (1.61 kilometers) on nonstate maintained public use highways from the highway segments specified in subsection (1) of this section for the purpose of attaining reasonable access to terminals, facilities for food, fuel, repairs and rest.

Section 6. (1) Household Goods Transporters. Motor vehicles with the increased dimensions specified in Section 4 of this administrative regulation and which are used to transport household goods by a motor carrier certificated by either the Interstate Commerce Commission or the Kentucky Transportation Cabinet to transport household goods shall have access to any public roadway in the Commonwealth of Kentucky.

(2) Single unit semitrailers. Motor vehicles with the increased dimensions specified in Section 4 of this regulation and which consist of only a truck tractor and single semitrailer which does not exceed twenty-eight (28) feet excluding any length exclusion safety device shall have access to any public roadway in the Commonwealth of Kentucky.

(3) Recreational vehicle. A recreational vehicle which has a registration license plate issued pursuant to KRS 186.050(11), 186.655, or equivalent statute from another licensing jurisdiction shall have access to any public state-maintained roadway in the Commonwealth of Kentucky as long as the dimensions of the recreational vehicle do not exceed those set forth in Section 4 of this administrative regulation. This shall not be considered a waiver of the weight restrictions of any highway.

Section 7. Nonstate Maintained Exceptions to One (1) Mile (1.61 Kilometers) Automatic Access. The following local government has adopted ordinances which exempt for safety reasons certain locally maintained roadways from the automatic one (1) mile (1.61 kilometers) access provision of Section 5(3) of this administrative regulation: The city of Anchorage in Jefferson County - the streets all within the corporate city limits of Anchorage listed in the city ordinance which shall not be used by motor vehicles with the increased dimensions specified in Section 4 of this administrative regulation are:

- (1) Evergreen Road;
- (2) Bellewood Road;
- (3) Lucas Lane; and
- (4) Old Harris Creek Road.

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Section 8. State-maintained Exceptions to Automatic Five (5) Mile (8.05 Kilometers) Access. The Department of Highways has found the following road segment for safety reasons to be exempt from the five (5) mile (8.05 kilometers) automatic access on state-maintained highways set forth in Section 5(2) of this administrative regulation. These road segments shall not be used by vehicles which exceed the dimension limits set forth in Section 4 of this administrative regulation without an overdimensional permit:

KY 146 - from the west boundary of the city of Anchorage at milepoint 4.258 to the east boundary of the city of Anchorage at milepoint 5.878.

KY 418 - from milepoint 2.892 at the intersection with the Blue Sky Parkway just southeast of the I-75 interchange in Fayette County to milepoint 6.089 at the Fayette/Clark County line.

KY 1973 - from milepoint 0.000 at the intersection with US 25 to milepoint 1.866 at its intersection with KY 418, all in Fayette County.

Section 9. Length Measurements. (1) The Federal Highway Administration interpretation of truck length and width exclusive devices published in the "Federal Register" on March 13, 1987 shall govern measuring the length of a semitrailer or trailer. Pages 7834 through 7840 of the March 13, 1987 "Federal Register" are incorporated by reference as a part of this administrative regulation.

(2) The material incorporated by reference may be viewed, copied, or obtained from the Transportation Cabinet, Division of Motor Vehicle Enforcement, 8th Floor, 501 High Street, Frankfort, Kentucky 40622. The telephone number is (502) 564-3276. The business hours of the division are 8 a.m. to 4:30 p.m. eastern time on weekdays.

ED LOGSDON, Commissioner

J.M. YOWELL, P.E., State Highway Engineer

JAMES C. CODELL, III, Secretary

APPROVED BY AGENCY: May 12, 1997

FILED WITH LRC: May 19, 1997 at 1 p.m.

REGULATORY IMPACT ANALYSIS

Contact person: Sandra Pullen Davis

(1) Type and number of entities affected: All operators of STAA type vehicles in Kentucky.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The only amendment in the emergency administrative regulation is the removal of the legal availability of KY 418 and KY 1973 by STAA vehicles. Since these highways are inadequate for the use of these vehicles, the only change in reality will be the posting of signs near I-75 notifying the truck drivers that these road segments are inadequate. There should be no change in the cost of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There should be no change in the cost of doing business.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: No change as a result of the changes to this administrative regulation.

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body: The Department of Highways will have to construct and erect several new signs, but there will be no other changes on the Transportation Cabinet.

(a) Direct and indirect costs or savings: The cost of the signs will be approximately \$5000.

1. First year: \$5000

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Road funds are used in the enforcement of this administrative regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No economic impacts are anticipated.

(b) Kentucky: Ditto

(7) Assessment of alternative methods; reasons why alternatives were rejected: The do-nothing alternative was rejected because many truck drivers seeking to avoid construction delays on I-75 are exiting the interstate highway onto KY 418 which was not constructed to accommodate these larger dimension vehicles.

(8) Assessment of expected benefits: An increase in highway safety on KY 418 and KY 1973.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Improved highway safety.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: It is likely that the truck drivers would continue to attempt to use these road segments and continue the unsafe conditions on the segments.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes, tiering was applied by allowing larger vehicles to operate on those highways with geometrics conducive to the safe operation of those vehicles.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 23 CFR Part 658, Truck Size and Weight; Reasonable Access requires each state to establish access provisions to the National Truck Network of Highways which meet the criteria set forth in the federal regulation and to get federal approval of the criteria.

2. State compliance standards. The state compliance standards set forth in this administrative regulation meet the federal requirements, but do not exceed them. Specifically, five-mile access on state-maintained highways and one-mile access on locally-maintained highways are allowed from the National Truck Network of Highways. However, if there are reasonable safety grounds for excluding a road segment from the access provisions, the Transportation Cabinet in accordance with 603 KAR 5:250 may do so.

3. Minimum or uniform standards contained in the federal mandate. Same as adopted in the state administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

ADMINISTRATIVE REGISTER - 32

STATEMENT OF EMERGENCY 902 KAR 20:016E

This emergency administrative regulation amends 902 KAR 20:016 to permit hospitals to provide long-term acute inpatient hospital services. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to public health, safety or welfare. The emergency administrative regulation shall be replaced by an ordinary administrative regulation. The notice of intent to promulgate an administrative regulation will be filed with the Regulations Compiler at the same time as this emergency administrative regulation is filed.

PAUL E. PATTON, Governor
JOHN MORSE, Secretary

CABINET FOR HEALTH SERVICES Office of Inspector General

902 KAR 20:016E. Hospitals; operations and services.

RELATES TO: KRS 214.175, 216B.010 to 216B.130, 216B.990, Chapter 310, 311.241 to 311.247, 311.990, 42 CFR 412.23(e)

STATUTORY AUTHORITY: KRS 216B.042, 216B.105, 314.011(8), 314.042(8), 320.240(14), 42 USC 263a, EO 96-862

EFFECTIVE: June 12, 1997

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 mandate that the Kentucky Cabinet for Health Services regulate health facilities and health services. This administrative regulation provides for the minimum licensure requirements for the operation of hospitals and the basic services to be provided by hospitals. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Office of Inspector General and its programs under the Cabinet for Health Services.

Section 1. Definitions. (1) "Accredited record technician" means a person who has graduated from a program for medical record technicians accredited by the Council on Medical Education of the American Medical Association and the American Medical Record Association; and who is certified as an accredited Record Technician by the American Medical Record Association.

(2) "Certified radiation operator" means a person who has been certified pursuant to KRS 211.870 and 902 KAR 105:010 to 105:070 as an operator of radiation producing machines.

(3) "Governing authority" means the individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the institution is vested.

(4) "Induration" means a firm area in the skin which develops as a reaction to the intradermal injection of five (5) tuberculin units of purified protein derivative by the Mantoux technique when a person has tuberculosis infection.

(5) "Medical staff" means an organized body of physicians, and dentists when applicable, appointed to the hospital staff by the governing authority.

(6) "Organ procurement agency" means a federally designated organization which coordinates and performs activities which encourage the donation of organs or tissues for transplantation.

(7) "Protective devices" means devices that are designed to protect a person from falling, to include side rails, safety vest or safety belt.

(8) "Psychiatric unit" means a department of a general acute care hospital consisting of eight (8) or more psychiatric beds organized for the purpose of providing psychiatric services.

(9) "Registered, certified or registry-eligible dietitian" means a person who is certified in accordance with KRS Chapter 310.

(10) "Registered records administrator" means a person who is certified as a registered records administrator by the American

Medical Record Association.

(11) "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body.

(12) "Skin test" means a tuberculin skin test utilizing the intradermal (Mantoux) technique using five (5) tuberculin units of purified protein derivative (PPD). The results of the test must be read forty-eight (48) to seventy-two (72) hours after injection and recorded in terms of millimeters of induration.

(13) "Two (2) step skin testing" means a series of two (2) tuberculin skin tests administered seven (7) to fourteen (14) days apart.

Section 2. Scope of Operation and Services. Hospitals are establishments with organized medical staffs and permanent facilities with inpatient beds which provide medical services, including physician services and continuous nursing services for the diagnosis and treatment of patients who have a variety of medical conditions, both surgical and nonsurgical.

Section 3. Administration and Operation. (1) Governing authority licensee.

(a) The hospital shall have a recognized governing authority that has overall responsibility for the management and operation of the hospital and for compliance with federal, state, and local laws and administrative regulations pertaining to its operation.

(b) The governing authority shall appoint an administrator whose qualifications, responsibilities, authority, and accountability shall be defined in writing and approved by the governing authority, and shall designate a mechanism for the periodic performance review of the administrator.

(2) Administrator.

(a) The administrator shall act as the chief executive officer and shall be responsible for the management of the hospital, and shall provide liaison between the governing authority and the medical staff.

(b) The administrator shall keep the governing authority fully informed of the conduct of the hospital through periodic reports and by attendance at meetings of the governing authority.

(c) The administrator shall develop an organizational structure including lines of authority, responsibility, and communication, and shall organize the day-to-day functions of the hospital through appropriate departmentalization and delegation of duties.

(d) The administrator shall establish formal means of accountability on the part of subordinates to whom he has assigned duties.

(e) The administrator shall hold interdepartmental and departmental meetings (where appropriate), shall attend or be represented at the meetings on a regular basis, and shall report to such departments as well as to the governing authority the pertinent activities of the hospital.

(3) Administrative records and reports.

(a) Administrative reports shall be established, maintained and utilized as necessary to guide the operation, measure productivity, and reflect the programs of the facility. These reports shall include: minutes of the governing authority and staff meetings, financial records and reports, personnel records, inspection reports, incident investigation reports, and other pertinent reports made in the regular course of business.

(b) The hospital shall maintain a patient admission and discharge register. Where applicable, a birth register and a surgical register shall also be maintained.

(c) Licensure inspection reports and plans of correction shall be made available to the general public upon request.

(4) Policies. The hospital shall have written policies and procedures governing all aspects of the operation of the facility and the services provided, including:

(a) A written description of the organizational structure of the facility including lines of authority, responsibility and communication,

and departmental organization;

(b) Admission policies which assure that patients are admitted to the hospital in accordance with policies of the medical staff;

(c) Constraints imposed on admissions by limitations of services, physical facilities, staff coverage or other factors;

(d) Financial requirements for patients on admission;

(e) Emergency admissions;

(f) Requirements for informed consent by patient, parent, guardian or legal representative for diagnostic and treatment procedures;

(g) There shall be an effective procedure for recording accidents involving a patient, visitor, or staff, and incidents of transfusion reactions, drug reactions, medication errors, etc.; and a statistical analysis shall be reported in writing through the appropriate committee;

(h) Reporting of communicable diseases to the health department in whose jurisdiction the disease occurs pursuant to KRS Chapter 214 and 902 KAR 2:020;

(i) Use of restraints and a mechanism for monitoring and controlling their use;

(j) Internal transfer of patients from one (1) level or type of care to another (if applicable);

(k) Discharge and termination of services; and

(l) Organ procurement for transplant protocol developed by the medical staff in consultation with the organ procurement agency.

(5) Patient identification. The hospital shall have a system for identifying each patient from time of admission to discharge (e.g., an identification bracelet imprinted with name of patient, hospital identification number, date of admission, and name of attending medical staff member).

(6) Discharge planning.

(a) The hospital shall have a discharge planning program to assure the continuity of care for patients being transferred to another health care facility or being discharged to the home.

(b) The professional staff of the facility involved in the patient's care during hospitalization shall participate in discharge planning of the patient whose illness requires a level of care outside the scope of the general hospital.

(c) The hospital shall coordinate the discharge of the patient with the patient and the person or agency responsible for the postdischarge care of the patient. All pertinent information concerning postdischarge needs shall be provided to the responsible person or agency.

(7) Transfer procedures and agreements.

(a) The hospital shall have written patient transfer procedures and agreements with at least one (1) of each type of other health care facilities which can provide a level of inpatient care not provided by the hospital. Any facility which does not have a transfer agreement in effect but has documented a good faith effort to enter into such an agreement shall be considered to be in compliance with this requirement. The transfer procedures and agreements shall specify the responsibilities each institution assumes in the transfer of patients and shall establish responsibility for notifying the other institution promptly of the impending transfer of a patient and arranging for appropriate and safe transportation.

(b) If the patient is transferred to another health care facility or to the care of a home health agency, a transfer form shall accompany the patient or be sent immediately to the home health agency. The transfer form shall include at least: attending medical staff member's instructions for continuing care, a current summary of the patient's medical record, information as to special supplies or equipment needed for patient care, and pertinent social information on the patient and family. When such transfer occurs, a copy of the patient's signed discharge summary shall be forwarded to another health care facility or home health agency within thirty (30) days of the patient's discharge.

(c) When a transfer is to another level of care within the same facility, the complete medical record or a current summary thereof

shall be transferred with the patient.

(8) Medical staff.

(a) The hospital shall have a medical staff organized under bylaws approved by the governing authority, which is responsible to the governing authority of the hospital for the quality of medical care provided to the patients and for the ethical and professional practice of its members.

(b) The medical staff shall develop and adopt policies or bylaws, subject to the approval of the governing authority, which shall:

1. State the necessary qualifications for medical staff membership including licensure to practice medicine or dentistry in Kentucky, except for graduate physicians in their first year of hospital training. For purposes of this document, medical staff shall mean physicians, and dentists when applicable.

2. Define and describe the responsibilities and duties of each category of medical staff (e.g., active, associate, courtesy, consulting, or honorary), delineate the clinical privileges of staff members and allied health professionals, and establish a procedure for granting and withdrawing staff privileges to include credentials review.

3. Provide a mechanism for appeal of decisions regarding staff membership and privileges.

4. Provide a method for the selection of officers of the medical staff.

5. Establish requirements regarding the frequency of, and attendance at, general staff and department or service meeting of the medical staff.

6. Provide for the appointment of standing and special committees, and include requirements for composition and organization, frequency of and attendance at meetings, and the minutes and reports which shall be part of the permanent records of the hospital. These committees may include: executive committee, credentials committee, medical audit committee, medical records committee, infections control committee, tissue committee, pharmacy and therapeutics committee, utilization review committee, and quality assurance committee.

(9) Personnel.

(a) The hospital shall employ a sufficient number of qualified personnel to provide effective patient care and all other related services and shall have written personnel policies and procedures which shall be available to all hospital personnel.

(b) There shall be a written job description for each position. Job descriptions shall be reviewed and revised as necessary.

(c) There shall be an employee health program for mutual protection of employees and patients including provisions for preemployment and periodic health examination. The hospital shall comply with the following tuberculosis testing requirements:

1. The skin test status of all staff members shall be documented in the employee's personnel record.

a. A skin test shall be initiated on all new staff members before or during the first week of employment and the results shall be documented in the employee's personnel record within the first month of employment.

b. Skin testing shall not be required at the time of initial employment if the employee documents a prior skin test of ten (10) or more millimeters of induration or if the employee is currently receiving or has completed six (6) months of prophylactic therapy or a course of multiple-drug chemotherapy for tuberculosis.

c. Two (2) step skin testing shall be required for new employees over age forty-five (45) whose initial test shows less than ten (10) millimeters of induration, unless they can document that they have had a tuberculosis skin test within one (1) year prior to their current employment.

d. All staff who have never had a skin test of ten (10) or more millimeters induration shall be skin tested annually on or before the anniversary of their last skin test.

2. All staff who are found to have a skin test of ten (10) or more millimeters induration, on initial employment testing or annual testing,

shall receive a chest x-ray unless a chest x-ray within the previous two (2) months showed no evidence of tuberculosis, or the individual can document the previous completion of a course of prophylactic treatment with isoniazid. Such employees shall be advised of the symptoms of the disease and instructed to report to their employer and seek medical attention promptly if symptoms persist.

3. The hospital administrator shall be responsible for ensuring that all skin tests and chest x-rays are done in accordance with subparagraphs 1 and 2 of this paragraph. All skin testing dates and results and all chest x-ray reports shall be recorded as a permanent part of the personnel record.

4. The following shall be reported by the hospital administrator to the local health department having jurisdiction immediately upon becoming known: names of staff who convert from a skin test of less than ten (10) to a skin test of ten (10) millimeters or more induration at the time of employment; and all chest x-rays suspicious for tuberculosis.

5. Any staff whose skin test status changes on annual testing from less than ten (10) to ten (10) or more millimeters of induration shall be considered to be recently infected with *Mycobacterium tuberculosis*. Such recently infected persons who have no signs or symptoms of tuberculosis disease on chest x-ray or medical history should be given preventive therapy with isoniazid for six (6) months unless medically contraindicated, as determined by a licensed physician. Medications shall be administered only upon the written order of a physician or advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8). If such individual is unable to take isoniazid therapy, the individual shall be advised of the clinical symptoms of the disease, and have an interval medical history and a chest x-ray taken and evaluated for tuberculosis disease every six (6) months during the two (2) years following conversion, for a total of five (5) chest x-rays.

6. Any staff who can document completion of preventive treatment with isoniazid shall be exempt from further screening requirements.

(d) Current personnel records shall be maintained for each employee which include the following:

1. Name, address, Social Security number;
 2. Health records;
 3. Evidence of current registration, certification, or licensure of personnel;
 4. Records of training and experience;
 5. Records of performance evaluation.
- (10) Physical and sanitary environment.

(a) The condition of the physical plant and the overall hospital environment shall be maintained in such a manner that the safety and well-being of patients, personnel and visitors are assured.

(b) A person shall be designated responsible for services and for the establishment of practices and procedures in each of the following areas: plant maintenance, laundry operations (if applicable), and housekeeping.

(c) There shall be an infection control committee charged with the responsibility of investigating, controlling and preventing infections in the hospital. Infection incident reports shall be filed.

(d) There shall be written infection control policies, which are consistent with the Centers for Disease Control guidelines including:

1. Policies which address the prevention of disease transmission to and from patients; visitors and employees, including but not limited to:
 - a. Universal blood and body fluid precautions;
 - b. Precautions for infections which can be transmitted by the airborne route; and
 - c. Work restrictions for employees with infectious diseases.
2. Policies which address the use of environmental cultures. Results of all testing shall be recorded and reported to the Infection Control Committee; and
3. Policies which address the cleaning, disinfection, and steril-

ization methods used for equipment and the environment.

(e) The hospital shall provide in-service education programs on the cause, effect, transmission, prevention and elimination of infections.

(f) The hospital buildings, equipment, and surroundings shall be kept in a condition of good repair, neat, clean, free from all accumulations of dirt and rubbish, and free from foul, stale or musty odors.

1. An adequate number of housekeeping and maintenance personnel shall be provided.

2. Written housekeeping procedures shall be established for the cleaning of all areas and copies shall be made available to personnel.

3. Equipment and supplies shall be provided for cleaning of all surfaces. Such equipment shall be maintained in a safe, sanitary condition.

4. Hazardous cleaning solutions, compounds, and substances shall be labeled, stored in closed metal containers and kept separate from other cleaning materials.

5. The facility shall be kept free from insects and rodents with harborages and entrances for these eliminated.

6. Garbage and trash shall be stored in areas separate from those used for preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

(g) Sharp wastes.

1. Sharp wastes, including needles, scalpels, razors, or other sharp instruments used for patient care procedures, shall be segregated from other wastes and placed in puncture resistant containers immediately after use.

2. Needles shall not be purposely bent or broken, or otherwise manipulated by hand as a means of disposal, except as permitted by Centers for Disease Control and Occupational Safety and Health Administration guidelines.

3. The containers of sharp wastes shall either be incinerated on or off site, or be rendered nonhazardous by a technology of equal or superior efficacy, which is approved by both the Cabinet for Health Services [~~Human Resources~~] and the Natural Resources and Environmental Protection Cabinet.

4. Nondisposable sharps such as large-bore needles or scissors shall be placed in a puncture resistant container for transport to the Central Medical and Surgical Supply Department in accordance with 902 KAR 20:009, Section 22.

(h) Disposable waste.

1. All disposable waste shall be placed in suitable bags or closed containers so as to prevent leakage or spillage, and shall be handled, stored, and disposed of in such a way as to minimize direct exposure of personnel to waste materials.

2. The hospital shall establish specific written policies regarding handling and disposal of all wastes.

3. The following wastes shall receive special handling:

a. Microbiology laboratory waste which includes viral or bacterial cultures, contaminated swabs, and specimen containers and test tubes used for microbiologic purposes shall either be incinerated, autoclaved or be rendered nonhazardous by technology of equal or superior efficacy, which is approved by both the Cabinet for Health Services [~~Human Resources~~] and the Natural Resources and Environmental Protection Cabinet; and

b. Pathological waste which includes all tissue specimens from surgical or necropsy procedures shall be incinerated.

4. The following wastes shall be disposed of by incineration, or be autoclaved before disposal, or be carefully poured down a drain connected to a sanitary sewer: blood, blood specimens, used blood tubes, or blood products.

5. Any wastes conveyed to a sanitary sewer shall comply with applicable federal, state, and local pretreatment administrative regulations pursuant to 40 CFR 403 and 401 KAR 5:055, Section 9.

6. Any incinerator used for the disposal of waste shall be in compliance with 401 KAR 59:020 and 401 KAR 61:010.

(i) The hospital shall have available at all times a quantity of linen

essential to the proper care and comfort of patients.

1. Linens shall be handled, stored, and processed so as to control the spread of infection.

2. Clean linen and clothing shall be stored in clean, dry, dust-free areas designated exclusively for this purpose. Uncovered mobile carts may be used to distribute a daily supply of linen in patient care areas.

3. Soiled linen and clothing shall be placed in suitable bags or closed containers so as to prevent leakage or spillage, and will be handled in such a way as to minimize direct exposure of personnel to soiled linen. Soiled linen shall be stored in areas separate from clean linen.

(11) Medical and other patient records.

(a) The hospital shall have a medical records service with administrative responsibility for medical records. A medical record shall be maintained, in accordance with accepted professional principles, for every patient admitted to the hospital or receiving outpatient services.

1. The medical records service shall be directed by a registered records administrator, either on a full-time, part-time, or consultative basis, or by an accredited record technician on a full-time or part-time basis, and shall have available a sufficient number of regularly assigned employees so that medical record services may be provided as needed.

2. All medical records shall be retained for a minimum of five (5) years from date of discharge, or in the case of a minor three (3) years after the patient reaches the age of majority under state law, whichever is the longer.

3. Provision shall be made for written designation of specific location for storage of medical records in the event the hospital ceases to operate because of disaster, or for any other reason. It shall be the responsibility of the hospital to safeguard both the record and its informational content against loss, defacement, and tampering. Particular attention shall be given to protection from damage by fire or water.

(b) A system of identification and filing to insure the prompt location of a patient's medical record shall be maintained:

1. Index cards shall bear at least the full name of the patient, the birth date, and the medical record number.

2. There shall be a system for coordinating the inpatient and outpatient medical records of any patient whose admission is a result of or related to outpatient services.

3. All clinical information pertaining to inpatient or outpatient services shall be centralized in the patient's medical record.

4. In hospitals using automated data processing, indexes may be kept on punch cards or reproduced on sheets kept in books.

(c) Records of patients are the property of the hospital and shall not be taken from the facility except by court order. This does not preclude the routing of the patient's records, or portion thereof, including x-ray film, to physicians or dentists for consultation.

1. Only authorized personnel shall be permitted access to the patient's records.

2. Patient information shall be released only on authorization of the patient, the patient's guardian or the executor of his estate.

(d) Medical record contents shall be pertinent and current and shall include the following:

1. Identification data and signed consent forms, including name and address of next of kin, and of person or agency responsible for patient;

2. Date of admission, name of attending medical staff member, and allied health professional in accordance with subsection (8)(b)2 of this section;

3. Chief complaint;

4. Medical history including present illness, past history, family history and physical examination;

5. Report of special examinations or procedures, such as consultations, clinical laboratory tests, x-ray interpretations, EKG interpretations, etc.;

6. Provisional diagnosis or reason for admission;

7. Orders for diet, diagnostic tests, therapeutic procedures, and medications, including patient limitations, signed and dated by the medical staff member or advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8), or therapeutically-certified optometrists as authorized in KRS 320.240(14);

8. Medical, surgical and dental treatment notes and reports, signed and dated by a physician, or dentist, advanced registered nurse practitioner or therapeutically-certified optometrist when applicable, including records of all medication administered to the patient;

9. Complete surgical record signed by attending surgeon, or oral surgeon, to include anesthesia record signed by anesthesiologist or anesthetist, preoperative physical examination and diagnosis, description of operative procedures and findings, postoperative diagnosis, and tissue diagnosis by qualified pathologist on tissue surgically removed;

10. Patient care plan which addresses the comprehensive care needs of the patient, to include the coordination of the facility's service departments that have impact on patient care;

11. Physician's, or dentist's, advanced registered nurse practitioner's or therapeutically-certified optometrist's when applicable, progress notes and nurses' observations;

12. Record of temperature, blood pressure, pulse and respiration;

13. Final diagnosis using terminology in the current version of the International Classification of Diseases or the American Psychiatric Association's Diagnostic and Statistical Manual, as is applicable;

14. Discharge summary, including condition of patient on discharge, and date of discharge;

15. In case of death, autopsy findings, if performed; and

16. In the case of death, an indication that the patient has been evaluated for organ donation in accordance with hospital protocol.

(e) Records shall be indexed according to disease, operation, and attending medical staff member. For indexing, any recognized system may be used.

1. The disease and operative indices shall be developed using a recognized nomenclature, and shall include each specific disease created and each operative procedure performed, and shall include all essential data on each patient having that particular condition;

2. The attending medical staff index shall include all patients attended or seen in consultation by each medical staff member;

3. Indexing shall be current, within six (6) months following discharge of the patient.

(12) Organ donation.

(a) The hospital shall establish and maintain a written organ procurement for transplant protocol, in consultation with an organ procurement agency, which encourages organ donation and identifies potential organ donors.

(b) In cases where an individual has died or death is imminent, the patient's attending physician shall determine, in accordance with the hospital's protocol, whether the patient is a potential organ or tissue donor.

(c) The hospital protocol shall include:

1. Criteria, developed in consultation with the organ procurement agency for identifying potential donors;

2. Procedures for obtaining consent for organ donation;

3. Procedures for the hospital administrator or his designee to notify the organ procurement agency of potential organ donors;

4. Procedures by which the patient's attending physician or designee in accordance with hospital protocol shall document in the patient's medical record that the organ procurement agency has been notified in the case of potential donors or contraindications to donation.

5. Procedures for the hospital administrator or his designee to report any information about the possible sale, purchase, or brokering of a transplantable organ to the Cabinet for Health Services, Office of the Inspector General, as required by KRS 311.241(3).

(d) A patient with impending or declared brain death or cardiopul-

monary death as determined pursuant to KRS 446.400 should not be considered as a potential donor if contraindications are identified and documented in the patient's medical record.

Section 4. Provision of Services. (1) Medical staff services.

(a) Medical care provided in the hospital shall be under the direction of a medical staff member in accordance with staff privileges granted by the governing authority.

(b) The attending medical staff member shall assume full responsibility for diagnosis and care of his patient. Other qualified personnel may complete medical histories, perform physical examinations, record findings, and compile discharge summaries, in accordance with their scope of practice and the hospital's protocols and bylaws.

(c) A complete history and physical examination shall be conducted and recorded within twenty-four (24) hours after admission of the patient.

(d) The attending medical staff member shall state his final diagnosis, assure that the discharge summary is completed and sign the records within thirty (30) days following the patient's discharge.

(e) Physician services shall be available twenty-four (24) hours a day on at least an on-call basis.

(f) There shall be sufficient medical staff coverage for all clinical services of the hospital in keeping with their size and scope of activity.

(2) Nursing service.

(a) The hospital shall have a nursing department organized to meet the nursing care needs of the patients and maintain established standards of nursing practice. A registered nurse, preferably one who has a bachelor of science degree in nursing, shall serve as director of the nursing department.

(b) There shall be a registered nurse on duty at all times.

1. There shall be registered nurse supervision and staff nursing personnel for each service or nursing unit to insure the immediate availability of a registered nurse for all patients on a twenty-four (24) hour basis.

2. There shall be other nursing personnel in sufficient numbers to provide nursing care not requiring the service of a registered nurse.

3. There shall be additional registered nurses for surgical, obstetrical, emergency, and other services of the hospital in keeping with their size and scope of activity.

4. All persons not employed by the hospital who render special duty nursing services in the hospital shall be under the supervision of the nursing supervisor of the department or service concerned.

(c) The hospital shall have written nursing care procedures and written nursing care plans for patients. Patient care shall be carried out in accordance with attending medical staff member's orders, nursing process, and nursing care procedures.

1. The nurse shall evaluate the patient by utilizing the nursing process in accordance with KRS 314.011.

2. A registered nurse shall assign staff and evaluate the nursing care of each patient in accordance with the patient's need and the nursing staff available.

3. Nursing notes shall be written and signed on each shift by persons rendering care to patients. The notes shall be descriptive of the nursing care given and shall include information and observations of significance which contribute to the continuity of patient care.

4. Medications shall be administered by a registered nurse, a physician, or dentist except in the case of a licensed practical nurse under the supervision of a registered nurse.

5. Medications or treatments shall not be given without a written order signed by a physician or dentist, when applicable, or advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8), or therapeutically-certified optometrists as authorized in KRS 320.240(14). Telephone orders for medications shall be given only to a licensed practical or registered nurse or a pharmacist and signed by the physician, dentist, advanced registered nurse practitioner or therapeutically-certified optometrist within twenty-four (24) hours from the time the order is given. Telephone orders may be given to licensed physical, occupational, speech or respiratory therapists in accordance with the therapist's scope of practice and the hospital's protocols.

6. Patient restraints or protective devices, other than bed rails, shall not be used, except in an emergency until the attending medical staff member can be contacted, or upon written or telephone orders of the attending medical staff member. When such restraint is necessary, the least restrictive form of protective device shall be used which affords the patient the greatest possible degree of mobility and protection. In no case shall a locking restraint be used.

7. Meetings of the nursing staff and other nursing personnel shall be held at least monthly to discuss patient care, nursing service problems, and administrative policies. Written minutes of all meetings shall be kept.

(3) Dietary services.

(a) The hospital shall have a dietary department, organized, directed and staffed to provide quality food service and optimal nutritional care.

1. The dietary department shall be directed on a full-time basis by an individual who by education or specialized training and experience is knowledgeable in food service management.

2. The dietary service shall have at least one (1) registered, certified or registry-eligible dietician either full-time, part-time, or on a consultative basis, to supervise the nutritional aspects of patient care.

3. Sufficient additional personnel shall be employed to perform assigned duties to meet the dietary needs of all patients.

4. The dietary department shall have available for all dietary personnel current written policies and procedures for food storage, handling, and preparation.

5. An in-service training program, which shall include the proper handling of food, safety and personal grooming, shall be given at least quarterly for new dietary employees.

(b) Menus shall be planned, written and rotated to avoid repetition. Nutritional needs shall be met in accordance with recommended dietary allowances of the Food and Nutrition Board of the National Research Council of the National Academy of Sciences and in accordance with the medical staff member's orders.

(c) Meals shall correspond with the posted menu. When changes in menu are necessary, substitution shall provide equal nutritive value and the changes shall be recorded on the menu. Menus shall be kept on file for thirty (30) days.

(d) All diets, regular and therapeutic, shall be prescribed in writing, dated, and signed by the attending medical staff member. Information on the diet order shall be specific and complete and shall include the title of the diet, modifications in specific nutrients stating the amount to be allowed in the diet, and specific problems that may affect the diet or eating habits.

(e) Food shall be prepared by methods that conserve nutritive value, flavor, and appearance, and shall be served at the proper temperatures and in a form to meet individual needs (e.g., it shall be cut, chopped, or ground to meet individual patient needs).

(f) If a patient refuses foods served, nutritious substitutions shall be offered.

(g) At least three (3) meals or their equivalent shall be served daily with not more than a fifteen (15) hour span between a substantial evening meal and a breakfast unless otherwise directed by the attending medical staff member. Meals shall be served at regular times with between-meal or bedtime snacks of nourishing quality offered.

(h) There shall be at least a three (3) day supply of food available in the facility at all times to prepare well-balanced palatable meals for all patients.

(i) There shall be an identification system for patient trays, and methods used to assure that each patient receives the appropriate diet as ordered.

(j) The hospital shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and 902 KAR 45:005 (~~Kentucky's Food Service Establishment Act and Food Service Code~~).

(4) Laboratory services. The hospital shall have a well-organized, adequately supervised laboratory with the necessary space, facilities and equipment to perform those services commensurate with the hospital's needs for its patients. Anatomical pathology services and blood bank services shall be available either in the hospital or by arrangement with other facilities.

(a) Clinical laboratory. Basic clinical laboratory services necessary for routine examinations shall be available regardless of the size, scope and nature of the hospital.

1. Equipment necessary to perform the basic tests shall be provided by the hospital.

2. All equipment shall be in good working order, routinely checked, and precise in terms of calibration.

3. Provision shall be made to carry out adequate clinical laboratory examinations including chemistry, microbiology, hematology, serology, and clinical microscopy.

a. Some of these services may be provided through arrangements with another licensed hospital which has the appropriate laboratory facilities, or with an independent laboratory licensed pursuant to KRS 333.030 and any administrative regulations promulgated thereunder.

b. When work is performed by an outside laboratory, the original report from this laboratory shall be contained in the patient's medical record.

4. Laboratory facilities and services shall be available at all times.

a. Adequate provision shall be made to assure the availability of emergency laboratory services twenty-four (24) hours a day, seven (7) days a week, including holidays, either in the hospital or under arrangements as specified in paragraph (a)3a of this subsection.

b. Where services are provided by an outside laboratory, the conditions, procedures, and availability of such services shall be in writing and available in the hospital.

5. There shall be a clinical laboratory director and a sufficient number of supervisors, technologists and technicians to perform promptly and proficiently the tests requested of the laboratory. The laboratory shall not perform procedures and tests which are outside the scope of training of the laboratory personnel.

6. Laboratory services shall be under the direction of a pathologist or other doctor of medicine or osteopathy with training and experience in clinical laboratory services, or a laboratory specialist with a doctoral degree in physical, chemical or biological sciences, and training and experience in clinical laboratory services.

7. Signed reports of all laboratory services provided shall be filed with the patient's medical record and duplicate copies kept in the department.

a. The laboratory report shall be signed by the technologist who performed the test.

b. There shall be a procedure for assuring that all requests for laboratory tests are ordered and signed by qualified personnel in accordance with their scope of practice and the hospital's protocols and bylaws.

(b) Anatomical pathology. Anatomical pathology services shall be provided as indicated by the needs of the hospital either in the hospital or under arrangements as specified in paragraph (a)3a of this subsection.

1. Anatomical pathology services shall be under the direct supervision of a pathologist on a full-time, regular part-time or regular consultative basis. If the latter pertains, the hospital shall provide for at least monthly consultative visits by a pathologist.

2. The pathologist shall participate in staff, departmental and clinicopathologic conference.

3. The pathologist shall be responsible for establishing the qualifications of staff and for their in-service training.

4. With exceptions of those exclusions listed in written policies of

the medical staff, all tissues removed at surgery shall be macroscopically, and if necessary, microscopically examined by the pathologist.

a. A list of tissues which do not routinely require microscopic examination shall be developed in writing by the pathologist or designated physician with the approval of the medical staff.

b. A tissue file shall be maintained in the hospital.

c. In the absence of a pathologist, there shall be an established plan for sending to a pathologist outside the hospital all tissues requiring examination.

5. Signed reports of tissue examinations shall be promptly filed with the patient's medical record and duplicate copies kept in the department.

a. All reports of macro and microscopic examinations performed shall be signed by the pathologist.

b. Provision shall be made for the prompt filing of examination results in the patient's medical record and notification of the medical staff member requesting the examination.

c. Duplicate copies of the examination reports shall be filed in the laboratory in a manner which permits ready identification and accessibility.

(c) The laboratory shall meet the proficiency testing and quality control provisions in accordance with certification requirements under 42 USC Part 263a.

(d) Blood bank. Facilities for procurement, safekeeping and transfusion of blood and blood products shall be provided or be readily available.

1. The hospital shall maintain, as a minimum, proper blood storage facilities under adequate control and supervision of the pathologist or other authorized physician.

2. For emergency situations the hospital shall maintain at least a minimum blood supply in the hospital at all times, shall be able to obtain blood quickly from community blood banks or institutions, or shall have an up-to-date list of donors and equipment necessary to bleed them.

3. If the hospital utilizes outside blood banks, there shall be a written agreement governing the procurement, transfer and availability of blood.

4. There shall be a provision for prompt blood typing and cross-matching and for laboratory investigation of transfusion reactions, either through the hospital or by arrangements with others on a continuous basis, under the supervision of a physician.

5. Blood storage facilities in the hospital shall have an adequate alarm system, which shall be regularly inspected and tested and is otherwise safe and adequate.

6. Records shall be kept on file indicating the receipt and disposition of all blood provided to patients in the hospital.

7. A committee of the medical staff or its equivalent shall review all transfusions of blood or blood derivatives and shall make recommendations concerning policies governing such practices.

8. Samples of each unit of blood used at the hospital shall be retained, according to the instructions of the committee indicated in subparagraph 7 of this paragraph, for further testing in the event of reactions. Blood not so retained which has exceeded its expiration date shall be disposed of promptly.

9. The review committee shall investigate all transfusion reactions occurring in the hospital and shall make recommendations to the medical staff regarding improvements in transfusion procedures.

(5) Pharmaceutical services.

(a) The hospital shall have adequate provisions for the handling, storing, recording, and distributing of pharmaceuticals in accordance with state and federal laws and administrative regulations.

1. A hospital which maintains a pharmacy for the compounding and dispensing of drugs shall provide pharmaceutical services under the supervision of a registered pharmacist on a full-time or part-time basis, according to the size and demands of the hospital.

a. The pharmacist shall be responsible for supervising and coordinating all the activities of the pharmacy department.

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b. Additional personnel competent in their respective duties shall be provided in keeping with the size and activity of the department.

2. Hospitals not maintaining a pharmacy shall have a drug room utilized only for the storage and distribution of drugs, drug supplies and equipment. Prescription medications shall be dispensed by a registered pharmacist elsewhere. The drug room shall be operated under the supervision of a pharmacist employed at least on a consultative basis.

a. The consulting pharmacist shall assist in drawing up correct procedures, rules for the distribution of drugs, and shall visit the hospital on a regularly scheduled basis in the course of his duties.

b. The drug room shall be kept locked and the key shall be in the possession of a responsible person on the premises designated by the administrator.

(b) Records shall be kept of the transactions of the pharmacy or drug room and correlated with other hospital records where indicated.

1. In accordance with accounting procedures of the hospital, the pharmacy shall establish and maintain a system of records and bookkeeping in accordance with policies of the hospital for maintaining adequate control over the requisitioning and dispensing of all drugs and drug supplies and charging patients for drugs and pharmaceutical supplies.

2. A record of the stock on hand and of the dispensing of all controlled substances shall be maintained in such a manner that the disposition of any particular item may be readily traced.

(c) The medical staff in cooperation with the pharmacist and other disciplines, as necessary, shall develop policies and procedures that govern the safe administration of drugs, including:

1. The administration of medications only upon the order of an individual who has been assigned clinical privileges or who is an authorized member of the house staff;

2. Review of the original order, or a direct copy by the pharmacist dispensing the drugs;

3. The establishment and enforcement of automatic stop orders;

4. Proper accounting for and disposition of unused medications or special prescriptions returned to the pharmacy as a result of patient being discharged, or when such medications or prescriptions do not meet sterile and label requirements;

5. Provision for emergency pharmaceutical services; and

6. Provision for reporting adverse medication reactions to the appropriate committee of the medical staff.

(d) Therapeutic ingredients of medications dispensed shall be included in the United States Pharmacopoeia, National Formulary, United States Homeopath-Pharmacopoeia, New Drugs, or Accepted Dental Remedies (except for any drugs unfavorably evaluated therein), or shall be approved for use by the appropriate committee of the medical staff.

1. A pharmacist shall be responsible for determining specifications and choosing acceptable sources for all drugs, with approval of the appropriate committee of the medical staff.

2. There shall be available a formulary or list of drugs accepted for use in the hospital which shall be developed and amended at regular intervals by the appropriate committee of the medical staff.

(6) Radiology services.

(a) The hospital shall have diagnostic radiology facilities. The radiology service shall have a current license or registration pursuant to KRS 211.842 to 211.852 and any administrative regulations promulgated thereunder.

1. The hospital shall provide at least one (1) fixed diagnostic x-ray unit which is capable of general x-ray procedures.

2. The hospital shall have a radiologist on at least a consulting basis to function as medical director of the department and to interpret films that require specialized knowledge for accurate reading.

3. Personnel adequate to supervise and conduct the services shall be provided, and at least one (1) certified radiation operator shall be on duty or on call at all times.

(b) There shall be written policies and procedures governing

radiologic services and administrative routines that support sound radiologic practices.

1. Signed reports shall be filed in the patient's record and duplicate copies kept in the department.

2. Radiologic services shall be performed only upon written order of qualified personnel in accordance with their scope of practice and the hospital's protocols and bylaws, and the order shall contain a concise statement of the reason for the service or examination.

3. Reports of interpretations shall be written or dictated and signed by the radiologist.

4. The use of all x-ray apparatus shall be limited to certified radiation operators, under the direction of medical staff members as necessary. The same limitation shall apply to personnel applying and removing radium element, its disintegration products, and radioactive isotopes.

(c) The radiology department shall be free of hazards for patients and personnel. Proper safety precautions shall be maintained against fire and explosion hazards, electrical hazards and radiation hazards.

(7) Physical restoration or rehabilitation service. If the hospital provides rehabilitation, work hardening, physical therapy, occupational therapy, audiology, or speech pathology services, the services shall be organized and staffed to insure the health and safety of patients.

(a) Hospitals in which physical restoration or rehabilitation services are available shall provide individualized techniques required to achieve maximum physical function normal to the patient while preventing unnecessary debilitation and immobilization.

(b) Written policies and procedures shall be developed for each rehabilitation service provided.

(c) A member of the medical staff shall be designated to have responsibility for coordinating the restorative services provided to the patients in accordance with their needs.

(d) Equipment for therapy shall be adequate to meet the needs of the service and shall be in good condition.

(e) Therapy services shall be provided only upon written orders of qualified personnel in accordance with their scope of practice and according to the hospital's protocols and bylaws.

(f) Therapy services shall be provided by or under the supervision of a licensed therapist, on a full-time, part-time or consultative basis.

(g) Complete therapy reports shall be maintained for each patient provided such services. The reports shall be signed by the therapist who prepared it and shall be a part of the patient's medical record.

(8) Emergency services.

(a) Every hospital shall have procedures for taking care of the emergency patient with at least a registered nurse on duty to evaluate the patient and a physician on call.

(b) If the facility has an organized emergency department or service, policies and an emergency care procedures manual governing medical and nursing care provided in the emergency room shall be established by and be a continuing responsibility of the medical staff.

1. The emergency service shall be under the direction of a licensed physician. Medical staff members shall be available at all times for the emergency service, either on duty or on call. Current schedules and telephone numbers shall be posted in the emergency room.

2. Nursing personnel shall be assigned to, or designated to cover, the emergency service at all times. ---

3. Facilities shall be provided to assure prompt diagnosis and emergency treatment. A specific area of the hospital shall be utilized for patients requiring emergency care on arrival. The emergency area shall be located in close proximity to an exterior entrance of the facility and shall be independent of the operating room suite.

4. Diagnostic and treatment equipment, drugs, and supplies shall be readily available for the provision of emergency services and shall be adequate in terms of the scope of services provided.

5. Adequate medical records shall be kept on every patient seen in the emergency room. These records shall be under the supervision

of the Medical Record Service and, where appropriate, shall be integrated with inpatient and outpatient records. Emergency room records shall include at least:

- a. A log book listing chronologically the patient visits to the emergency room including patient identification, means of arrival and person transporting patient, and time of arrival;
- b. History of present complaint and physical findings;
- c. Laboratory and x-ray reports, where applicable;
- d. Diagnosis;
- e. Treatment ordered and details of treatment provided;
- f. Patient disposition;
- g. Record of all referrals;
- h. Instructions to the patient or family for those not admitted to the hospital; and
- i. Signatures of attending medical staff member, and nurse when applicable.

(9) Outpatient services.

(a) A hospital which has an organized outpatient department shall have written policies and procedures relating to the staff, functions of service, and outpatient medical records.

(b) The outpatient department shall be organized in sections (clinics), the number of which shall depend on the size and degree of departmentalization of the medical staff, the available facilities, and the needs of the patient it serves.

(c) The outpatient department shall have appropriate cooperative arrangements and communications with community agencies such as home health agencies, the local health department, social and welfare agencies, and other outpatient departments.

(d) Services offered by the outpatient department shall be under the direction of a physician who is a member of the medical staff.

1. A registered nurse shall be responsible for the nursing services of the department.

2. The number and type of other personnel employed shall be determined by the volume and type of services provided and type of patient served in the outpatient department.

(e) Necessary laboratory and other diagnostic tests shall be available either through the hospital or a laboratory in another licensed hospital or a laboratory licensed pursuant to KRS 333.030 and any administrative regulations promulgated thereunder.

(f) Medical records shall be maintained and, where appropriate, coordinated with other hospital medical records.

1. The outpatient medical record shall be filed in a location which insures ready accessibility to the medical staff members, nurses, and other personnel of the outpatient department.

2. Information in the medical record shall be complete and sufficiently detailed relative to the patient's history, physical examination, laboratory and other diagnostic tests, diagnosis, and treatment to facilitate continuity of care.

(10) Surgery services.

(a) Hospitals in which surgery is performed shall have an operating room and a recovery room supervised by a registered nurse qualified by training, experience and ability to direct surgical nursing care.

1. Sufficient surgical equipment including suction facilities and instruments in good repair shall be provided to assure safe and aseptic treatment of all surgical cases.

2. When flammable anesthetics are used, precautions shall be taken to eliminate hazards of explosions, including use of shoes with conductive soles and prohibition of garments or other items of silk, wool, or synthetic fibers which accumulate static electricity.

(b) There shall be effective policies and procedures regarding surgical staff privileges, functions of the service, and evaluation of the surgical patient.

1. Surgical privileges shall be delineated for all members of the medical staff doing surgery in accordance with the competencies of each, and a roster shall be maintained.

2. Except in emergencies, a surgical operation or other hazardous

procedures shall be performed only on written consent of the patient or his legal representative.

3. The operating room register shall be complete and up to date. It shall include the patient's name; hospital room number; preoperative and postoperative diagnosis; complications, if any; names of surgeon, first assistant, anesthesiologist or anesthetist, scrub and circulating nurse; operation performed; and type of anesthesia.

4. There shall be a complete history and physical workup in the chart of every patient prior to surgery. If such has been transcribed but not yet recorded in the patient's chart, there shall be a statement to that effect and an admission note by the attending medical staff member in the chart. The chart of the patient shall accompany him to the operating suite and shall be returned to the patient's floor or room after the operation.

5. An operative report describing the techniques and findings shall be written or dictated immediately following surgery and signed by the surgeon.

6. All tissues removed by surgery shall be placed in suitable solutions, properly labeled, and submitted to the pathologist for macroscopic and, if necessary, microscopic examinations.

7. All infections of clean surgical cases shall be recorded and reported to the appropriate committee of the medical staff. A procedure shall exist for the investigation of such cases.

(c) Rules and policies related to the operating rooms shall be available and posted.

(11) Anesthesia services.

(a) The hospital which provides surgical or obstetrical services shall have anesthesia services available, and these services shall be organized under written policies and procedures regarding staff privileges, the administration of anesthetics, and the maintenance of safety controls.

(b) A physician member of the medical staff shall be the medical director of anesthesia services. Whenever possible, the director shall be a physician specializing in anesthesiology.

(c) If anesthetics are not administered by an anesthesiologist, the medical staff shall designate a medical staff anesthetist or a registered nurse anesthetist qualified to administer anesthetics under the supervision of the operating surgeon.

(d) Every patient requiring anesthesia services shall have a preanesthetic physical examination by a medical staff member with findings recorded within forty-eight (48) hours of surgery, an anesthetic record on a special form, a postanesthetic follow-up, with findings recorded by the anesthesiologist, medical staff anesthetist, or nurse anesthetist.

(e) The postanesthetic follow-up note shall be written upon discharge from the postanesthesia recovery area or within three (3) to twenty-four (24) hours after the procedures which required anesthesia. This note shall include a record of blood pressure, pulse, presence or absence of the swallowing reflex and cyanosis, any postoperative abnormalities or complications, and the general condition of the patient.

(12) Obstetrics service.

(a) Hospitals providing obstetrical care of patients shall have adequate space, necessary equipment and supplies, and a sufficient number of nursing personnel to assure safe and aseptic treatment of mothers and newborns and provide protection from infection and cross-infection.

1. The obstetrics service shall be under the medical direction of a physician and under the supervision of a registered nurse qualified by training, experience, and ability to direct effective obstetrical and newborn nursing care. In hospitals where the obstetrical caseload does not justify a separate nursing staff, obstetrical nurses shall be designated and shall be oriented to the specific needs of obstetrical patients.

2. A registered nurse shall be on duty in the labor and delivery unit whenever any patient is in the unit. Each obstetrics patient shall be kept under close observation by professional personnel during the

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period of recovery after delivery, whether in the delivery room or in a recovery area, until she is transferred to the maternity unit.

3. An on-call schedule or other suitable arrangement shall be provided to ensure that a physician who is experienced in obstetrics is readily available for consultation and obstetrical emergencies.

4. Provisions shall be made for the care of patients in labor with adequately equipped labor rooms.

(b) An adequate supply of prophylaxis for the prevention of infant blindness shall be kept on hand and administered within thirty (30) minutes after delivery.

(c) The hospital shall comply with the provisions of KRS 214.155 and 902 KAR 4:030 in administering tests for inborn errors of metabolism to infants.

(d) There shall be an acceptable method and procedure for the positive associative identification of the mother and infant. This shall be done in the delivery room at the time of birth and shall remain in place during the entire period of hospitalization.

(e) An up-to-date register book of all deliveries shall be maintained containing the following information:

1. Infant's full name, sex, date, time of birth and weight;
2. Mother's full name, including maiden name, address, birthplace and age at time of this birth;
3. Father's full name, birthplace, age at time of this birth; and
4. Full name of attending physician or nurse midwife.

(f) Each hospital providing maternity service shall provide a nursery which shall not be used for any other purpose. Specific routines for daily care of infants and their environment shall be prepared in writing and posted in the nursery workroom.

(g) A policy shall be established for deliveries occurring outside the delivery room and for patients who are infectious.

(h) Written policies and procedures shall be developed to cover alternative use of obstetrical beds.

(i) The hospital shall comply with the provisions of KRS 214.175 in participating in surveys relating to the determination of alcohol or other substance abuse among pregnant women and newborn infants.

(13) Pediatric services.

(a) Hospitals providing pediatric care shall have proper facilities for the care of children apart from the newborn and maternity nursing services. If there is not a separate area permanently designated as the pediatric unit, there shall be an area within an adult care unit for pediatric patient care. There shall be available beds and other equipment which are appropriate in size for pediatric patients.

(b) There shall be proper facilities and procedures for the isolation of children with infectious, contagious or communicable conditions. At least one (1) patient room shall be available for isolation use.

(c) A physician with pediatric experience shall be on call at all times for the care of pediatric patients.

(d) Pediatric nursing care shall be under the supervision of a registered nurse qualified by training, experience and ability to direct effective pediatric nursing. All nursing personnel assigned to pediatric service shall be oriented to the special care of children.

(e) Policies shall be established to cover conditions under which parents may stay with small children or "room-in" with their hospitalized child for moral support and assistance with care.

(14) Psychiatric services. Hospitals which have a psychiatric unit shall designate the location and number of beds to be licensed as psychiatric beds and meet the requirements of psychiatric hospitals operations and services, licensure administrative regulation.

(15) Chemical dependency treatment services. Hospitals providing chemical dependency treatment services shall meet the requirements of 902 KAR 20:160, Chemical dependency treatment services and facility specifications, Section 3, Administrative and Operation and Section 4, Provision of Services, and designate location and the number of beds to be used for this purpose.

(16) Medical library.

(a) The hospital shall maintain appropriate medical library services according to the professional and technical needs of hospital

personnel.

(b) The medical library shall be in a location accessible to the professional staff, and its contents shall be organized and available at all times to the medical and nursing staffs.

Section 5. Long-term Acute Inpatient Hospital Services. (1) A hospital licensed pursuant to this administrative regulation may provide long-term acute inpatient hospital services pursuant to applicable federal law and upon the following conditions:

(a) The area of the hospital designated to provide long-term acute inpatient hospital services shall have:

1. An average length of inpatient stay greater than twenty-five (25) days.

2. A separate governing body.

3. A separate medical staff.

4. A separate chief executive officer.

(b) All services shall be provided through the use of employees or under contracts or other agreements with entities other than the host hospital or a third entity that controls both the hospital and the area designated to provide long-term acute inpatient hospital services, except that food and dietetic services, housekeeping, maintenance and other services necessary to maintain a clean and safe physical environment may be obtained under contracts or other agreements with the host hospital or a third entity that controls both the host hospital and the area designated to provide long-term acute inpatient hospital services or as otherwise permitted by federal law.

(c) Hospitals wishing to provide long-term acute inpatient hospital services may request authorization from the Division of Licensing and Regulation, Office of Inspector General, Cabinet for Health Services. The Division of Licensing and Regulation shall conduct a survey to determine whether the requirements of this section are met and shall notify the hospital of the survey results by letter.

TIMOTHY L. VENO, Inspector General

JOHN MORSE, Secretary

APPROVED BY AGENCY: June 10, 1997

FILED WITH LRC: June 12, 1997 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ralph Von Derau

(1) Type and number of entities affected: There are presently 107 licensed acute care hospitals.

(2) Direct and indirect costs or savings to those affected:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: To be determined after the Notice of Intent public hearing.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: To be determined after the Notice of Intent public hearing.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No additional reporting requirements imposed.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Survey costs to determine whether the requirements for providing long-term inpatient hospital services are met.

1. First year: Unable to anticipate.

2. Continuing costs or savings: Unable to anticipate.

3. Additional factors increasing or decreasing costs: No additional factors.

(b) Reporting and paperwork requirements: Paperwork related to

surveys and notification of survey results.

(4) Assessment of anticipated effect on state and local revenues: No effect.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: To be determined after the Notice of Intent public hearing.

(b) Kentucky: To be determined after the Notice of Intent public hearing.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS Chapter 216B mandates that minimum standards be established for licensure.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: These are minimum health care standards intended to protect the public.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: Hospitals would be unable to provide long-term acute inpatient hospital services.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication. 42 CFR 412.23(e)

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions?

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. This is a licensure program and, as such, applies to all licensed services.

STATEMENT OF EMERGENCY 902 KAR 55:095E

The administrative regulation 902 KAR 55:095E establishes the criteria for dispensing a Schedule II controlled substance pursuant to a faxed prescription and for partially filling a prescription for a Schedule II controlled substance. The amendments allow a hospice patient's prescription for a Schedule II controlled substance to be filled pursuant to a faxed prescription (as is currently permitted for long-term care residents and patients receiving parenteral pain control); and a prescription for a Schedule II controlled substance for parenteral administration to be faxed to any pharmacy, not a home infusion pharmacy only. This administrative regulation is needed to conform with recently amended federal regulations 21 CFR Secs. 1306.11 and 1306.13. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor
JOHN H. MORSE, Secretary

CABINET FOR HEALTH SERVICES Department for Public Health Division of Environmental Health and Community Safety

902 KAR 55:095E. Prescription for Schedule II controlled substance - facsimile transmission or partial filling.

RELATES TO: KRS 218A.070, 218A.180, 218A.200, 902 KAR 55:080, 21 CFR 1306.05, 1306.11 to 1306.14 [~~1306.15~~]
STATUTORY AUTHORITY: KRS 194.050, 218A.250, EO 96-862
EFFECTIVE: June 12, 1997

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources, establishes and creates the Cabinet for Health Services, changes the name of the Department for Health Services to Department for Public Health, and places the Department for Public Health and its programs under the Cabinet for Health Services. KRS 218A.250 directs the Cabinet for Health Services [~~Human Resources~~] to promulgate administrative regulations for carrying out the provisions of KRS Chapter 218A relating to controlled substances. The purpose of this administrative regulation is to permit the transmission of prescriptions for Schedule II controlled substances between the prescriber and dispenser via facsimile, on a limited basis, in order to facilitate the delivery of medications to certain patients whose medication needs change quickly and whose prescription should be communicated rapidly. This administrative regulation also permits the partial filling of prescriptions for Schedule II controlled substances to certain patients whose medication needs may be long term but who wish to store limited quantities or in situations where the pharmacy is unable to supply the full quantity prescribed.

Section 1. Definitions. (1) "Hospice" means a hospice program licensed by the Cabinet for Health Services. [~~"Home infusion pharmacy" means a pharmacy which compounds solutions for direct administration to a patient in a private residence, long-term care facility or hospice setting by means of parenteral, intravenous, intramuscular, subcutaneous or intraspinal infusion.~~]

(2) "Long-term care facility" means a nursing home, skilled nursing facility, nursing facility as defined in PL 100-203, intermediate care facility, or intermediate care facility for the mentally retarded.

Section 2. Transmission by Facsimile of a Prescription for a Schedule II Controlled Substance. (1) A prescription prepared in accordance with KRS 218A.180, 21 CFR 1306.05 and 902 KAR 55:080 for a Schedule II narcotic substance to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous or intraspinal infusion may be transmitted by a practitioner or the practitioner's agent to the dispensing [~~a home infusion~~] pharmacy by facsimile.

(2) A prescription prepared in accordance with KRS 218A.180, 21 CFR 1306.05 and 902 KAR 55:080 for a Schedule II controlled substance for a resident of a long-term care facility may be transmitted by a practitioner or the practitioner's agent to the dispensing pharmacy by facsimile.

(3) A prescription prepared in accordance with KRS 218A.180, 21 CFR 1306.05 and 902 KAR 55:080 for a Schedule II controlled substance for a hospice patient may be transmitted by a practitioner or the practitioner's agent to the dispensing pharmacy by facsimile. The practitioner or the practitioner's agent shall note on the prescription that the patient is a hospice patient.

(4)(a) The facsimile prescription shall serve as the written prescription, required by KRS 218A.180(1) for the dispensing of a Schedule II controlled substance.

(b) Within seven (7) calendar days after transmitting a facsimile prescription for a Schedule II controlled substance, the prescribing practitioner shall deliver the original written prescription to the dispensing pharmacy.

(c) A practitioner who fails to deliver the original written prescription within the period specified in paragraph (b) of this subsection shall be deemed to have violated KRS 218A.1404(3).

Section 3. Partial Filling of a Prescription for a Schedule II Controlled Substance. (1) Except as provided in subsection (2) of this section a pharmacist may partially fill a prescription for a controlled substance listed in Schedule II if the pharmacist:

(a) Is unable to dispense the full quantity prescribed;

(b) Makes a notation of the quantity dispensed on the face of the written prescription; and

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(c) Dispenses the remaining portion of the prescription within seventy-two (72) hours of the first partial filling. No further quantity shall be dispensed without a new written prescription.

(2) A written prescription for a Schedule II controlled substance written for a patient in a long-term care facility (LTCF) or for a patient with a documented terminal illness may be dispensed in partial quantities, including but not limited to individual dosage units if:

(a) The pharmacist records on the face of the prescription whether the patient is "terminally ill" or an "LTCF patient" [or words of similar meaning];

(b) The pharmacist records on the back of the written prescription or on another appropriate record, uniformly maintained and readily retrievable, the following data:

1. The date of the partial dispensing;
2. The quantity dispensed;
3. The remaining quantity authorized to be dispensed; and
4. The identification of the dispensing pharmacist;

(c) The pharmacist contacts the practitioner prior to dispensing the partial quantity if there is any question whether the patient is terminally ill, since both the pharmacist and the prescribing practitioner have a corresponding responsibility to assure that the controlled substance is for a terminally ill patient;

(d) ~~The pharmacist determines that each subsequent partial dispensing is necessary;~~

~~(e)}~~ The total quantity dispensed in all partial dispensings does not exceed the quantity prescribed; and

~~(e) {#}~~ No dispensing occurs beyond sixty (60) days from date of issuance of the prescription.

(3) A prescription that is partially filled and does not comply with the requirements of subsection (1) or (2) of this section shall be deemed to have been filled in violation of KRS 218A.200(3), (4) and 21 CFR 1306.13.

RICE C. LEACH, MD, Commissioner

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: June 10, 1997

FILED WITH LRC: June 12, 1997 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Contact person: Danna Droz

(1) Type and number of entities affected: 14,000 pharmacists and physicians, as well as an indeterminate number of hospice patients or patients who receive Schedule II narcotics for parenteral administration.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received on this issue.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received on this issue.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There is no compliance, reporting or paperwork required by this regulation except what is already required by federal regulation.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no anticipated costs or savings to the administrative agency because the amendments merely expand the exemptions allowed for Schedule II controlled substance prescriptions.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There is no reporting or paperwork required by this administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues is anticipated.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The administration of drug regulations is financed by the general fund.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No comments received related to this issue.

(b) Kentucky: No comments received related to this issue.

(7) Assessment of alternative methods: reasons why alternatives were rejected: Alternatives were rejected because Schedule II medication delivery would be impeded.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The benefit is conformity with federal regulations and the expedited delivery of certain medications.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: If the administrative regulation is not implemented, certain patients will have to wait longer to have prescriptions for scheduled II controlled substances filled.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy conflicts, overlaps or duplicates this administrative regulation.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied because the provisions apply to all physicians who prescribe for and pharmacists who dispense to the patient groups identified by the regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The comparable federal regulations are 21 CFR 1306.11, 1306.12.

2. State compliance standards. The only state standards are set forth in this administrative regulation.

3. Minimum or uniform standards contained in the federal mandate. The criteria for faxed or partially filled prescriptions for Schedule II substances are set forth in 21 CFR 1306.11 and 1306.12.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The regulation imposes no requirements or responsibilities different than federal law.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards are not imposed.

STATEMENT OF EMERGENCY

904 KAR 2:035E

The administrative regulation 904 KAR 2:035E, Right to apply and reapply, implements application requirements for the Kentucky Transitional Assistance Program (K-TAP). This emergency administrative regulation is needed to comply with the mandated requirements

pursuant to the approved Title IV-A State Plan as required by 42 USC 601 et seq. and to conform with the provisions found in 904 KAR 2:006E and 2:016E. The passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 has eliminated entitlement to the Aid to Families with Dependent Children (AFDC) Program and has created the Temporary Assistance for Needy Families Block Grant Program, called the Kentucky Transitional Assistance Program (K-TAP) in Kentucky. The Cabinet for Families and Children is required to include the mandatory provisions of 42 USC 601 et seq. in the Title IV-A State Plan. References to Aid to Families with Dependent Children (AFDC) have been changed to Kentucky Transitional Assistance Program (K-TAP) to conform with the provisions in 904 KAR 2:006E and 2:016E. The deadline imposed by the Department of Health and Human Services for the complete Title IV-A State Plan for implementation of the mandated requirements of the cabinet's Title IV-A block grant program is October 18, 1996. Therefore, in order to meet this deadline by the U.S. Department of Health and Human Services, this emergency administrative regulation must be placed in effect immediately in order to amend the requirements in 904 KAR 2:035. An ordinary administrative regulation would not allow sufficient time to meet the time frames. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor
VIOLA P. MILLER, Secretary

CABINET FOR FAMILIES AND CHILDREN
Department for Social Insurance
Division of Management and Development

904 KAR 2:035E. Right to apply and reapply.

RELATES TO: KRS 194.060, 205.175, 205.177, 205.200(1), 205.245, 45 CFR 206.10 (a)(1), 42 USC 601 et seq., 1973gg-5 (40) STATUTORY AUTHORITY: KRS 13A.120, 116.048, 194.050(1), 205.200(2), 42 USC 601 et seq., EO 96-862

EFFECTIVE: May 30, 1997

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Insurance and its programs under the Cabinet for Families and Children. The Cabinet for Families and Children [Human Resources] shall administer public assistance programs including Kentucky Transitional Assistance Program (K-TAP) [Aid to Families with Dependent Children (AFDC)] and the State Supplementation Program (SSP) of the aged, blind and persons with disabilities. This administrative regulation sets forth the procedure by which an application for assistance under these programs shall be made. KRS 116.048 designates the cabinet to have responsibility for the administration of public assistance programs as a voter registration agency in accordance with 42 USC 1973gg-10. Therefore, this administrative regulation sets forth policy and procedures necessary to provide an eligible public assistance participant the opportunity to register, or to decline from registering, to vote.

Section 1. Right to Apply or Reapply. (1) Each individual wishing to do so shall have the opportunity to apply or reapply for Kentucky Transitional Assistance Program (K-TAP) or State Supplementation Program (SSP) [AFDC or SSP] through the Department for Social Insurance (DSI).

(2) An application shall be considered to have been made:

(a) The date the individual or his representative has signed, under penalty of perjury:

1. The DSI application form, incorporated by reference in 904 KAR 3:030; and

2. The application has been received at the DSI office; or

(b) The date of contact with the agency by a person with a physical or mental disability who needs special accommodation due to the impairment.

(3) If the client is physically unable to come to the office to apply, he may:

(a) Designate an authorized representative to apply for him; or

(b) Request a home visit to complete the application process.

(4) The applicant may be assisted by any individual of his choice in the application process and may be accompanied by this individual in all contacts with the agency.

(5) In accordance with the procedures described in 900 KAR 1:070, interpreter services shall be provided for persons who are:

(a) Deaf; or

(b) Hard of hearing.

(6) Interpreter services shall be provided for a non-English speaking individual, utilizing procedures and forms specified by 900 KAR 1:070.

(7) The cabinet shall not discriminate against any applicant or participant in any aspect of program administration for reasons of age, race, color, sex, disability, religious creed, national origin or political beliefs.

Section 2. Who may Sign an Application. (1) Except for a case based on incapacity, an application for Kentucky Transitional Assistance Program (K-TAP) [AFDC] shall be signed by:

(a) The relative with whom a needy child lives;

(b) The legally appointed committee of the relative; or

(c) A representative authorized in writing to act on behalf of the relative.

(2) An application for Kentucky Transitional Assistance Program (K-TAP) [AFDC] based on incapacity shall be signed by:

(a) Any individual listed in subsection (1) of this section; or

(b) An interested party acting on behalf of the applicant.

(3) An application for state supplementation shall be signed by:

(a) The individual who is aged, blind or has a disability;

(b) An interested party;

(c) His legally appointed guardian [committee]; or

(d) The representative payee receiving the Supplemental Security Income (SSI) benefit.

Section 3. Where Applications are Filed and Processed. (1) The application may be made at any DSI office, and shall be processed in the county of residence.

(2) If the client is applying in a county other than the county of residence and the client is hospitalized:

(a) The DSI office in the county of hospitalization shall take the application and transfer the pending application to the county of residence; and

(b) The DSI office in the county of residence shall process the application using the original application date.

(3) If the client is applying in a county other than the county of residence and the client is not hospitalized:

(a) The DSI office in the receiving county shall:

1. Partially complete the application;

2. Transfer it to the county of residence on the same day the application is taken; and

3. Explain to the client that the application will be processed in the county of residence;

(b) The DSI office in the county of residence shall schedule a face-to-face interview. The application is processed using the original application date.

(4) Application by mail.

(a) A Kentucky resident who is temporarily out of state, or someone acting on his behalf may initiate the application process by mail if:

1. An emergency arises from accident or sudden illness;

2. Care and services are needed immediately; and

3. Health would be endangered by returning to the state.
(b) Upon notification of the emergency an application form will be forwarded to the initiating party.

Section 4. Action on Applications. (1) A decision shall be made on each application and payment made within:

(a) Forty-five (45) days for Kentucky Transitional Assistance Program (K-TAP) or State Supplementation Program (SSP) [AFDC or SSP]; or

(b) Ninety (90) days for State Supplementation Program (SSP) determinations in which permanent and total disability shall be established.

(2) Exception to this time standard may be made if:

(a) The applicant is unable to obtain necessary verification for a determination of eligibility; or

(b) For failure or delay, that cannot be controlled by the department, on the part of the applicant or examining physician.

(3) The case record shall document the cause for the delay when the time standards are not met.

(4) Failure to process an application within the time frame shall not be used as the basis for denial.

Section 5. Voter Registration. (1) In accordance with KRS 116.048 and 42 USC 1973gg-10, an applicant or recipient meeting all of the following criteria shall be provided the opportunity to complete an application to register to vote or update his current voter registration:

(a) Be age eighteen (18) or over; and

(b) Be present in the office at the time of the interview or when a change of address is reported; and

(c) Not be registered to vote or not registered to vote at his current address.

(2) An individual not included in the assistance application shall not be registered to vote in this process, including a:

(a) Payee only;

(b) An authorized representative; or

(c) An individual acting as a responsible party.

(3) An individual providing voter registration services who seeks to unlawfully influence an applicant's political preference or party registration as prohibited by KRS 116.048(4) could be fined or imprisoned, not to exceed five (5) years, or both.

(4) Forms and information utilized in the voter registration process shall remain confidential and used only for voter registration purposes.

(5) Only Board of Elections officials may view forms and information utilized directly in the voter registration process.

(6) Completion of the Voter Registration Form is only an application to apply to register to vote. The State Board of Elections shall approve the application to register to vote and send a confirmation or denial notice to the applicant.

(7) Forms necessary to apply for assistance or to register a K-TAP or state supplementation (SSP) [an AFDC or SSP] participant to vote are incorporated by reference in 904 KAR 3:030, Section 10.

Section 6. Disclosure of Information. Use or disclosure of information obtained from applicant households, exclusively for the program, shall be restricted pursuant to KRS 194.060, 205.175, and 205.177. [to the following individuals:

~~(1) Public employees including any duly identified representative of the Department of Health and Human Services in the performance of his duties in connection with the administration of the assistance program;~~

~~(2) Law enforcement agencies and representatives including county and commonwealth attorneys, county and circuit court judges and grant juries in discovering and prosecuting cases involving fraud.~~

~~(3) State and local law enforcement officials who, in the proper exercise of their duties, provide the name and Social Security number~~

~~of an AFDC recipient, and satisfactorily demonstrate that the recipient is a fugitive felon. Release of information in this situation is limited to address of the AFDC recipient only.~~

~~(4) Members of Congress and the General Assembly, limited to cases of individual constituents who have requested information regarding their application or payment status.~~

~~(5) Any interested party that has requested a hearing before an agency hearing officer, to the extent necessary for the proper presentation of the case. Information in this situation is limited to that which is applicable to the hearing request.~~

~~(6) Officials administering any Federal or federally assisted program which provides assistance in cash or in kind, or services directly to individuals on the basis of need. Disclosure in this situation is limited to AFDC and benefits programs other than Medical Assistance.~~

~~(7) Any audit or similar activity conducted in connection with the administration of any federal or federally assisted program.~~

~~(8) Any employer to certify receipt of AFDC for purposes of claiming a tax credit under Public Law 94-12.~~

~~(9) Any individual or agency agreeing to Departmental standards of confidentiality for the purpose of the provision of social services, employment or training to recipients of AFDC and benefit programs other than Medical Assistance.~~

~~(10) Any service providers attempting to provide assistance to JOBS or self-initiated participants. Disclosure of information in this situation is limited to purposes directly connected with providing services or issuing supportive services payments.~~

~~(11) Officials administering any federally funded foster care and adoption assistance programs.~~

~~(12) Local law enforcement agency, The Kentucky State Police, commonwealth or county attorney to report known or suspected instances of child abuse and neglect of a child receiving assistance.~~

~~(13) Attorneys or absent parents who appear in the local office with a court order carrying a signature of a judge.]~~

JOHN L. CLAYTON, Commissioner

VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: May 28, 1997

FILED WITH LRC: May 30, 1997 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: The affected entities are families who apply for or receive benefits under the Kentucky Transitional Assistance Program (K-TAP). The AFDC Program was replaced by the Temporary Assistance for Needy Families (TANF) Block Grant Program called Kentucky Transitional Assistance Program (K-TAP) as the result of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. There are approximately 66,200 families in Kentucky (monthly average) who are currently receiving benefits from K-TAP.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: To be determined after the publication of the notice of intent.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: To be determined after the publication of the notice of intent.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: The individuals who are applicants or recipients of AFDC, now K-TAP, will not have any additional compliance, reporting or paperwork requirements.

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2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no additional costs or savings to the agency as a result of the emergency amendments to this regulation.

2. Second and subsequent years: Same

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds and state funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: To be determined after the publication of the notice of intent.

(b) Kentucky: To be determined after the publication of the notice of intent.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the state is responsible under federal requirements to implement a program funded under 42 USC 601 et seq.

(8) Assessment of expected benefits: This emergency administrative regulation is needed to comply with the mandated requirements in 42 USC 601 et seq. and to conform with the mandates found in 904 KAR 2:006E and 2:016E. Pursuant to the approved Title IV-A State Plan as required by 42 USC 601 et seq., confidentially requirements are changed to coincide with requirements in Kentucky statutes only instead of federal regulations and Kentucky statutes.

(b) State whether a harmful effect on environment and public welfare would result if not implemented: A detrimental effect on public welfare would result if this amendment is not implemented.

(c) If detrimental effect would result, explain detrimental effect: Pursuant to the approved Title IV-A State Plan as required by 42 USC 601 et seq., confidentially requirements are changed to coincide with requirements in Kentucky statutes only instead of federal regulations and Kentucky statutes. Public assistance benefits received by needy Kentuckians may be jeopardized if Kentucky does not meet the mandated requirements delineated in Kentucky's Title IV-A State Plan as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: References to Aid to Families with Dependent Children (AFDC) have been changed to Kentucky Transitional Assistance Program (K-TAP) to conform with the provisions in 904 KAR 2:006E and 2:016E.

(11) TIERING: Is tiering applied? No. Tiering was not applied since application of policy is applied in a like manner for all individuals as set forth through federal requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 601 et seq.

2. State compliance standards. KRS 194.060, 205.175, 205.177, 205.200.

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those

required by the federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

STATEMENT OF EMERGENCY

904 KAR 2:040E

The administrative regulation 904 KAR 2:040E, Procedures for determining initial and continuing eligibility, implements requirements for the eligibility determination process for the Kentucky Transitional Assistance Program (K-TAP). This emergency administrative regulation is needed to comply with the mandated requirements pursuant to the approved Title IV-A State Plan as required by 42 USC 601 et seq. and to conform with the provisions found in 904 KAR 2:006E and 2:016E. The passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 has eliminated entitlement to the Aid to Families with Dependent Children (AFDC) Program and has created the Temporary Assistance for Needy Families Block Grant Program, called the Kentucky Transitional Assistance Program (K-TAP) in Kentucky. The Cabinet for Families and Children is required to include the mandatory provisions of 42 USC 601 et seq. in the Title IV-A State Plan. References to Aid to Families with Dependent Children (AFDC) have been changed to Kentucky Transitional Assistance Program (K-TAP) to conform with the provisions in 904 KAR 2:006E and 2:016E. The deadline imposed by the Department of Health and Human Services for the complete Title IV-A State Plan for implementation of the mandated requirements of the cabinet's Title IV-A block grant program is October 18, 1996. Therefore, in order to meet this deadline by the U.S. Department of Health and Human Services, this emergency administrative regulation must be placed in effect immediately in order to amend the requirements in 904 KAR 2:040. An ordinary administrative regulation would not allow sufficient time to meet the time frames. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor

VIOLA P. MILLER, Secretary

CABINET FOR FAMILIES AND CHILDREN

Department for Social Insurance

Division of Management and Development

904 KAR 2:040E. Procedures for determining initial and continuing eligibility.

RELATES TO: KRS 205.200(2), 205.245, 42 USC 601 et seq. [45 CFR 206.10(a)(2)(ii), 206.10(a)(9)(iii), 206.10(a)(9)(iv)]

STATUTORY AUTHORITY: KRS 13A.120, 194.050(1), 205.200, 42 USC 601 et seq., EO 96-862

EFFECTIVE: May 30, 1997

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Insurance and its programs under the Cabinet for Families and Children. The Cabinet for Families and Children [Human Resources] shall administer the following public assistance programs: Kentucky Transitional Assistance Program (K-TAP) [Aid to Families with Dependent Children (AFDC)] and State Supplementation Program (SSP). This administrative regulation sets forth the procedures used to determine initial and continuing eligibility for assistance under these programs.

Section 1. Eligibility Determination Process. (1) Eligibility shall be determined prospectively. To receive or continue to receive assistance, a household shall meet all of the eligibility criteria for the month payment is intended to cover.

(2) Each decision regarding eligibility or ineligibility for assistance shall be supported by facts recorded in the applicant's or recipient's case record.

(a) The applicant or recipient shall be the primary source of information and shall be required to:

1. Furnish verification of:
 - (a) Income;
 - (b) Resources; and
 - (c) Technical eligibility; and

2. Give written consent to those contacts necessary to verify or furnish any factor pertinent to the decision of eligibility.

(b) When informed in writing of the appointment or necessary information to be provided, failure of the applicant or recipient to appear for a scheduled interview or present required information at the time requested shall be considered a failure by the applicant or recipient to present adequate proof of eligibility.

Section 2. Continuing Eligibility. (1) The recipient shall be responsible for reporting within ten (10) days any change in circumstances which may affect eligibility or the amount of payment.

(2) Eligibility shall be redetermined:

(a) When a report is received or information is obtained about changes in circumstances;

(b) At least every twenty-four (24) [twelve (12)] months for State Supplementation Program (SSP) cases in which Supplemental Security Income (SSI) is not received; and

(c) ~~Except for cases identified in the alternate redetermination plan, at least every six (6) months for AFDC cases; and~~

~~(d) At least every twelve (12) months for Kentucky Transitional Assistance Program (K-TAP) cases. [AFDC cases identified in the alternate redetermination plan.~~

~~(3) An AFDC case shall be identified in the alternate redetermination plan if:~~

~~(a) The case is not based on a deprivation of unemployment of one (1) of the parents, as specified in 904 KAR 2:006, Section 9; and~~

~~(b) The case does not include a recipient who has earned income; or~~

~~(c) The application of exclusions and deductions from income, set forth in 904 KAR 2:016, Section 4, permit the case to qualify for the maximum payment for the household size, as specified in 904 KAR 2:016, Section 7; and~~

~~(d) At least one (1) of the following conditions shall be met:~~

~~1. The household contains a recipient of Supplemental Security Income (SSI) benefits;~~

~~2. The case has been active for three (3) or more years; or~~

~~3. The case does not contain an adult member. However, if the household contains an otherwise eligible adult who was excluded from the case for failure to comply with a technical requirement, as specified in 904 KAR 2:006 or 904 KAR 2:370, the agency may retain the case in the standard six (6) month redetermination schedule.~~

Section 3. Reviews of SSP Cases. (1) SSP cases containing SSI income shall be reviewed every six (6) months to:

(a) Determine that the special need for which supplementation is granted continues to exist;

(b) Verify living situation and income; and

(c) Adjust the SSP payment, if appropriate.

(2) SSP cases not containing SSI income shall be reviewed six (6) months following the yearly redetermination to:

(a) Review all items subject to change; and

(b) Adjust the SSP payment, if appropriate.]

JOHN L. CLAYTON, Commissioner

VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: May 28, 1997

FILED WITH LRC: May 30, 1997 at 11 a.m.

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: The affected entities are families who apply for or receive benefits under the Kentucky Transitional Assistance Program (K-TAP). The AFDC Program was replaced by the Temporary Assistance for Needy Families (TANF) Block Grant Program called Kentucky Transitional Assistance Program (K-TAP) as the result of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. There are approximately 66,200 families in Kentucky (monthly average) who are currently receiving benefits from K-TAP.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: To be determined after the publication of the notice of intent.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: To be determined after the publication of the notice of intent.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: The individuals who are applicants or recipients of AFDC, now K-TAP, will not have any additional compliance, reporting or paperwork requirements.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Increasing recertification periods for K-TAP recipients from 6 months to 12 months and state supplementation cases from 12 months to 24 months will be cost neutral to the agency. The 6 month reviews for state supplementation cases are eliminated. The time the agency saves in doing recertifications and reviews for recipients will enable current departmental staff to have more time to devote to additional required activities as a result of welfare reform changes such as assisting recipients in obtaining employment.

2. Second and subsequent years: Same

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds and state funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: To be determined after the publication of the notice of intent.

(b) Kentucky: To be determined after the publication of the notice of intent.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the state is responsible under federal requirements to implement a program funded under 42 USC 601 et seq.

(8) Assessment of expected benefits:

(a) Identify effects on public welfare and environmental welfare of the geographical area in which implemented and on Kentucky: The emergency amendments to this administrative regulation is needed to comply with the mandated requirements in 42 USC 601 et seq. and to conform with the mandates found in 904 KAR 2:006E and 2:016E. The Aid to Families with Dependent Children (AFDC) Program no longer exists and has been replaced with Kentucky Transitional

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Assistance Program (K-TAP), the Temporary Assistance for Needy Families (TANF) Block Grant Program. References to Aid to Families with Dependent Children (AFDC) have been changed to Kentucky Transitional Assistance Program (K-TAP) to conform with the provisions in 904 KAR 2:006E and 2:016E and with requirements in the approved Title IV-A State Plan. Policy regarding the alternate redetermination plan for recertifications in Section 2 is removed. This policy was the result of the previous AFDC state plan and federal regulations which are now not applicable. The AFDC state plan has been superseded by the current Title IV-A State Plan for the TANF Block Grant Program. In addition, recipients and new applicants of K-TAP currently required to have a 6 month recertification period will now have a 12 month recertification. Recipients and new applicants of state supplementation will have a recertification period up to 24 months instead of 12 months. This change will allow the recipient to undergo a recertification interview less frequently and will reduce visits to the local Department for Social Insurance office. The requirement for the recipient to timely report required changes to the department will not change. Fewer recertifications will enable current departmental staff to have more time to devote to additional required activities as a result of welfare reform changes such as assisting recipients in obtaining employment.

(b) State whether a harmful effect on environment and public welfare would result if not implemented: A detrimental effect on public welfare would result if this amendment is not implemented.

(c) If detrimental effect would result, explain detrimental effect: Public assistance benefits received by needy Kentuckians may be jeopardized if Kentucky does not meet the mandated requirements delineated in Kentucky's Title IV-A State Plan as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: References to Aid to Families with Dependent Children (AFDC) have been changed to Kentucky Transitional Assistance Program (K-TAP) to conform with the provisions in 904 KAR 2:006E and 2:016E.

(11) TIERING: Is tiering applied? No. Tiering was not applied since application of policy is applied in a like manner for all individuals as set forth through federal requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 601 et seq.
2. State compliance standards. KRS 205.200
3. Minimum or uniform standards contained in the federal mandate. None
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No
5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

STATEMENT OF EMERGENCY

904 KAR 2:046E

The administrative regulation 904 KAR 2:046E, Adverse action, conditions, implements conditions under which assistance for the Kentucky Transitional Assistance Program (K-TAP) is denied, reduced, or discontinued. This emergency administrative regulation is needed to comply with the mandated requirements pursuant to the approved Title IV-A State Plan as required by 42 USC 601 et seq.

and to conform with the provisions found in 904 KAR 2:006E and 2:016E. The passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 has eliminated entitlement to the Aid to Families with Dependent Children (AFDC) Program and has created the Temporary Assistance for Needy Families Block Grant Program, called the Kentucky Transitional Assistance Program (K-TAP) in Kentucky. The Cabinet for Families and Children is required to include the mandatory provisions of 42 USC 601 et seq. in the Title IV-A State Plan. References to Aid to Families with Dependent Children (AFDC) have been changed to Kentucky Transitional Assistance Program (K-TAP) to conform with the provisions in 904 KAR 2:006E and 2:016E. The deadline imposed by the Department of Health and Human Services for the complete Title IV-A State Plan for implementation of the mandated requirements of the cabinet's Title IV-A block grant program is October 18, 1996. Therefore, in order to meet this deadline by the U.S. Department of Health and Human Services, this emergency administrative regulation must be placed in effect immediately in order to amend the requirements in 904 KAR 2:046. An ordinary administrative regulation would not allow sufficient time to meet the time frames. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor

VIOLA P. MILLER, Secretary

CABINET FOR FAMILIES AND CHILDREN Department for Social Insurance Division of Management and Development

904 KAR 2:046E. Adverse action; conditions.

RELATES TO: KRS 205.200(2), 205.245, 45 CFR 205.10(a)(4), 206.10(a)(4), 42 USC 601 et seq.

STATUTORY AUTHORITY: KRS 13A.120, 194.050(1), 42 USC 601 et seq., EO 96-862

EFFECTIVE: May 30, 1997

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Insurance and its programs under the Cabinet for Families and Children. The Cabinet for Families and Children [Human Resources] shall administer public assistance programs including Kentucky Transitional Assistance Program (K-TAP) [Aid to Families with Dependent Children (AFDC)] and mandatory and optional supplementation of persons who are aged, blind and have a disability. This administrative regulation sets forth the conditions under which an application is denied or assistance is decreased or discontinued and advance notice requirements.

Section 1. Definitions. (1) "Applicant" means an individual applying for:

(a) State supplementation benefits; or

(b) Kentucky Transitional Assistance Program (K-TAP) [AFDC] benefits.

(2) "Application" means the process set forth in 904 KAR 2:035E.

(3) "Recipient" means:

(a) A person who is aged, blind, or has a disability receiving state supplementation benefits; or

(b) A member of a Kentucky Transitional Assistance Program (K-TAP) [an AFDC] assistance group as defined in 904 KAR 2:016E.

Section 2. Reasons for Adverse Action. (1) An application shall be denied if:

(a) Income or resources exceed the standards for the specific assistance program as set forth in 904 KAR 2:016E and 904 KAR 2:015E;

(b) The applicant does not meet technical eligibility criteria or fails

to comply with a technical requirement as set forth in 904 KAR 2:006E, 904 KAR 2:015E and 904 KAR 2:370E;

(c) Despite receipt of written notice detailing the additional information needed for a determination, the applicant fails to provide sufficient information or clarify conflicting information necessary for a determination of eligibility;

(d) The applicant fails to keep the appointment for an interview;

(e) The applicant requests in writing voluntary withdrawal of application;

(f) Department staff is unable to locate the applicant; or

(g) The applicant is no longer domiciled in Kentucky.

(2) Assistance shall be discontinued or decreased if:

(a) Income or resources of the recipient increase or deductions decrease resulting in reduced or discontinued benefits as set forth in 904 KAR 2:016E or 904 KAR 2:015E;

(b) The recipient does not meet technical eligibility criteria or fails to comply with a technical requirement as set forth in 904 KAR 2:006E, 904 KAR 2:015E or 904 KAR 2:370E;

(c) Despite receipt of written notice detailing the additional information needed for a redetermination, the recipient fails to provide sufficient information or clarify conflicting information necessary for a redetermination of eligibility;

(d) The recipient fails to keep the appointment for an interview;

(e) The cabinet is recovering Kentucky Transitional Assistance Program (K-TAP) [AFDC] overpayments through recoupment;

(f) Department staff is unable to locate recipient;

(g) The recipient is no longer domiciled in Kentucky;

(h) Change in program policy adversely affects the recipient; or

(i) For Kentucky Transitional Assistance Program (K-TAP) [AFDC] only, the grant amount is less than ten (10) dollars.

Section 3. Notification of Denial of Applications. If an application is denied, the applicant shall be given:

(1) Written notification of the denial which shall include:

(a) The reason for the denial; and

(b) The cites of the applicable state administrative regulation.

(2) The right to a fair hearing as provided by 904 KAR 2:055E.

Section 4. Advance Notice of a Decrease or Discontinuance. (1) The recipient shall be given ten (10) days advance notice of the proposed action if a change in circumstances indicates:

(a) A money payment shall be:

1. Reduced;

2. Suspended; or

3. Discontinued; or

(b) An individual shall be removed from the Kentucky Transitional Assistance Program (K-TAP) [AFDC] grant, even if the grant increases.

(2) The ten (10) days advance notice of the proposed action shall:

(a) Be in writing;

(b) Explain the reason for the proposed action;

(c) Cite the applicable state administrative regulation;

(d) Extend the opportunity to confer with the worker or to request a fair hearing.

(3) A hearing request received during the advance notice period may result in delay of the decrease or discontinuance pending the hearing officer's decision, as provided in 904 KAR 2:055E, Section 4.

Section 5. Exceptions to the Advance Notice Requirement. An advance notice of proposed action shall not be required, but written notice of action taken shall be given, if the decrease or discontinuance results from:

(1) Information reported by the recipient if the recipient signs a waiver of the notice requirement indicating understanding of the consequences;

(2) A clear written statement, signed by the recipient, that he no longer wishes assistance is received by the department;

(3) Factual information that the recipient, or a Kentucky Transitional Assistance Program (K-TAP) [an AFDC] payee when there is no relative who can serve as a new payee, has died is received by the department;

(4) Whereabouts of the recipient are unknown and mail addressed to him is returned indicating no known forwarding address; however, a returned check shall be made available to him if his whereabouts become known during the payment period covered by the returned check;

(5) Establishment by the agency that assistance has been accepted in another state;

(6) Removal from the home of a Kentucky Transitional Assistance Program (K-TAP) [an AFDC] child by judicial order or voluntary placement in foster care by his legal guardian;

(7) The person who is aged, blind or has a disability and is a supplementation recipient, enters a nursing facility resulting in vendor payment status;

(8) The recipient enters:

(a) A penal institution; or

(b) If under sixty-five (65), a tuberculosis hospital; or

(c) If between twenty-one (21) and sixty-five (65), a mental hospital;

(9) The granting of a special allowance, or time limited assistance, which:

(a) Shall be terminated at the end of a specified period or under specific conditions; and

(b) The recipient shall be informed in writing at the time the allowance or assistance is granted of the automatic termination; and

(c) The notice may be provided at the time of approval, or subsequently.

Section 6. Material Incorporated by Reference. (1) The form necessary for adverse action in the Kentucky Transitional Assistance Program (K-TAP) [AFDC] and Mandatory and Optional Supplementation Programs is being incorporated effective June 1, 1997 [December 1, 1993]. This form is the KIM-105, revised 6/97 [9/94].

(2) Material incorporated by reference may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

JOHN L. CLAYTON, Commissioner

VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: May 28, 1997

FILED WITH LRC: May 30, 1997 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: The affected entities are families who apply for or receive benefits under the Kentucky Transitional Assistance Program (K-TAP). The AFDC program was replaced by the Temporary Assistance for Needy Families (TANF) Block Grant Program called Kentucky Transitional Assistance Program (K-TAP) as the result of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. There are approximately 66,200 families in Kentucky (monthly average) who are currently receiving benefits from K-TAP.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: To be determined after the publication of the notice of intent.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: To be determined after the publication of the notice of intent.

(c) Compliance, reporting, and paperwork requirements, including

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factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: The individuals who are applicants or recipients of AFDC, now K-TAP, will not have any additional compliance, reporting or paperwork requirements.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

2. First year: There are no additional costs or savings to the agency as a result of the emergency amendments to this regulation.

2. Second and subsequent years: Same

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds and state funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: To be determined after the publication of the notice of intent.

(b) Kentucky: To be determined after the publication of the notice of intent.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the state is responsible under federal requirements to implement a program funded under 42 USC 601 et seq.

(8) Assessment of expected benefits: The emergency amendments to this administrative regulation is needed to comply with the mandated requirements in 42 USC 601 et seq. and to conform with the mandates found in 904 KAR 2:006E and 2:016E. The Aid to Families with Dependent Children (AFDC) Program no longer exists and has been replaced with Kentucky Transitional Assistance Program (K-TAP), the Temporary Assistance for Needy Families (TANF) block grant program. References to Aid to Families with Dependent Children (AFDC) have been changed to Kentucky Transitional Assistance Program (K-TAP) to conform with the provisions in 904 KAR 2:006E and 2:016E and the approved Title IV-A State Plan.

(b) State whether a harmful effect on environment and public welfare would result if not implemented: A detrimental effect on public welfare would result if this amendment is not implemented.

(c) If detrimental effect would result, explain detrimental effect: Public assistance benefits received by needy Kentuckians may be jeopardized if Kentucky does not conform to the mandated requirements delineated in 904 KAR 2:006E and 2:016E pursuant to Kentucky's Title IV-A State Plan as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: References to Aid to Families with Dependent Children (AFDC) have been changed to Kentucky Transitional Assistance Program (K-TAP) to conform with the provisions in 904 KAR 2:006E and 2:016E.

(11) TIERING: Is tiering applied? No. Tiering was not applied since application of policy is applied in a like manner for all individuals as set forth through federal requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

42 USC 601 et seq.

2. State compliance standards. KRS 205.200

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

STATEMENT OF EMERGENCY 904 KAR 2:050E

The administrative regulation 904 KAR 2:050E, Time and manner of payments, implements payment of benefit requirements for the Kentucky Transitional Assistance Program (K-TAP). This emergency administrative regulation is needed to comply with the mandated requirements pursuant to the approved Title IV-A State Plan as required by 42 USC 601 et seq. and to conform with the provisions found in 904 KAR 2:006E and 2:016E. The passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 has eliminated entitlement to the Aid to Families with Dependent Children (AFDC) Program and has created the Temporary Assistance for Needy Families Block Grant Program, called the Kentucky Transitional Assistance Program (K-TAP) in Kentucky. The Cabinet for Families and Children is required to include the mandatory provisions of 42 USC 601 et seq. in the Title IV-A State Plan. References to Aid to Families with Dependent Children (AFDC) have been changed to Kentucky Transitional Assistance Program (K-TAP) to conform with the provisions in 904 KAR 2:006E and 2:016E. The deadline imposed by the Department of Health and Human Services for the complete Title IV-A State Plan for implementation of the mandated requirements of the cabinet's Title IV-A block grant program is October 18, 1996. Therefore, in order to meet this deadline by the U.S. Department of Health and Human Services, this emergency administrative regulation must be placed in effect immediately in order to amend the requirements in 904 KAR 2:050. An ordinary administrative regulation would not allow sufficient time to meet the time frames. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor
VIOLA P. MILLER, Secretary

CABINET FOR FAMILIES AND CHILDREN Department for Social Insurance Division of Management and Development

904 KAR 2:050E. Time and manner of payments.

RELATES TO: KRS 205.220(1), 45 CFR 255.3, 42 USC 601 et seq.

STATUTORY AUTHORITY: KRS 194.050(1), 45 CFR 255.3, 42 USC 601 et seq., EO 96-862

EFFECTIVE: May 30, 1997

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Insurance and its programs under the Cabinet for Families and Children. The Cabinet for Families and Children [Human Resources] shall, under the provisions of KRS Chapter 205, administer the assistance programs of Kentucky Transitional Assistance Program (K-TAP) and Kentucky Works [Aid to Families with Dependent Children (AFDC), Job Opportunities and Basic Skills (JOBS)] and a state funded program of money payments to those persons who are aged, blind and have a disability who are disadvantaged by the implementation of the

Supplemental Security Income (SSI) Program. In addition KRS 205.245 provides for money payments to certain other persons who are aged, blind or have a disability. The cabinet shall make payments, described in 904 KAR 2:015, for the persons with mental illness or mental retardation (MIMR) supplement program. This administrative regulation sets forth the time and the manner in which payments are made.

Section 1. Authorization of Kentucky Transitional Assistance Program (K-TAP) [AFDC] Assistance Payments. (1) Method of payment.

- (a) A payment may ~~shall~~ be issued monthly by check; and
- (b) A payment shall be issued prospectively.
- (2) Initial payment.

(a) A Kentucky Transitional Assistance Program (K-TAP) [AFDC] approval shall not be made for any period prior to the date of application.

(b) The effective date of an initial payment for a Kentucky Transitional Assistance Program (K-TAP) [AFDC] approval shall be the date an application is filed if all eligibility factors are met as of that date.

(c) If all eligibility factors are not met as of the day of application, the approval shall be effective the date on which all factors are met.

(3) Subsequent and special payments.

(a) A subsequent Kentucky Transitional Assistance Program (K-TAP) [AFDC] payment shall be made for an entire month in which all technical eligibility factors are met as of the first day of the month.

(b) A subsequent Kentucky Transitional Assistance Program (K-TAP) [AFDC] payment shall not be made to an individual for any month in which the amount of the benefit payment, prior to any recoupment, would be less than ten (10) dollars. Any individual who is denied a payment for this reason shall be deemed a recipient of Kentucky Transitional Assistance Program (K-TAP) [AFDC] for all other purposes.

(c) A special payment shall be issued:

- 1. When the regular monthly payment received is less than the entitled amount based on the household circumstances; and
- 2. For a period of up to twelve (12) months preceding the month of error correction, if the error existed in the preceding months.

(4) Inalienability of payments.

(a) A Kentucky Transitional Assistance Program (K-TAP) [AFDC] payment is unconditional and is exempt from any remedy for the collection of a debt, lien or encumbrance from any individual or agency other than the cabinet.

(b) The cabinet shall initiate recoupment to recover overpayment of benefits.

(5) Eligible payee.

(a) A money payment shall usually be issued in the name of the eligible applicant.

(b) A protective payment may be made to a third party payee if:

- 1. A determination has been made by the agency that poor money management is contributing to the unsuitability of the home for a needy child; ~~or~~

2. The payee has refused, without good cause as specified in 904 KAR 2:006E and 904 KAR 2:370E, to participate in the Kentucky Works [Job Opportunities and Basic Skills (JOBS) Program] or the Child Support Program; or

3. A minor teenage parent is determined to be ineligible for Kentucky Transitional Assistance Program (K-TAP) pursuant to 904 KAR 2:006E, Section 18(7).

(c) A Kentucky Transitional Assistance Program (K-TAP) [AFDC] payment for the month of death may be reissued to:

- 1. The widow or widower;
 - 2. The parent;
 - 3. The guardian; or
 - 4. The executor or administrator of the estate.
- (d) If the payment is reissued to an executor or administrator, a

copy of the appointment order shall be obtained as verification.

Section 2. Supportive Services for Kentucky Works [JOBS] Participants. (1) A Kentucky Works [JOBS] supportive services or child care payment shall be made by check and shall be made monthly.

(2) A supportive services payment for a Kentucky Works [JOBS] participant shall be made according to the type of service provided, as follows:

(a) A child care payment shall be issued:

- 1. On a one (1) month retrospective cycle;
- 2. Directly to the provider; and
- 3. Within thirty (30) days of receipt of appropriate verification, as specified in 904 KAR 2:017.

(b) Transportation.

1. A transportation payment shall be made prospectively ~~[not to exceed ninety-three (93) dollars a month]~~ for anticipated transportation costs.

2. A transportation payment shall be made directly to the Kentucky Transitional Assistance Program (K-TAP) [AFDC] recipient.

(c) Other approved supportive services payments shall be made:

- 1. Directly to the provider; and
- 2. Within thirty (30) days of receipt of appropriate verification of service delivery of billing, as specified in 904 KAR 2:017E.

Section 3. Authorization of a State Supplementation Payment. (1) Method of payment.

- (a) A payment shall be issued monthly by check; and
- (b) A payment shall be issued prospectively.

(2) Initial payment.

(a) The effective date for State Supplementation Program (SSP) approval shall be the first day of the month in which:

- 1. An application is filed; and
- 2. All eligibility factors are met.

(b) A State Supplementation Program (SSP) approval shall be made for the entire month during any part of which eligibility factors are met.

(3) Subsequent and special payments.

(a) A State Supplementation Program (SSP) payment shall be made for an entire month in which eligibility factors are met as of the first day of the month.

(b) A special payment shall be made:

- 1. When the regular monthly payment received is less than the entitled amount based on the household circumstances; and
- 2. For a period of up to twelve (12) months preceding the month of error correction, if the error existed in the preceding months.

(4) Inalienability of a payment.

(a) A State Supplementation Program (SSP) money payment is unconditional and is exempt from any remedy for the collection of a debt, lien or encumbrance from any individual or agency other than the cabinet.

(b) The cabinet may initiate recoupment to recover overpayment of benefits.

(5) Eligible payee.

(a) A money payment shall usually be issued in the name of the eligible applicant.

(b) A money payment may be issued to:

- 1. The legally appointed committee or guardian; or
- 2. The person serving as the representative payee for another statutory benefit such as SSI.

(c) A State Supplementation Program (SSP) payment for the month of death may be reissued to:

- 1. The widow or widower;
- 2. The parent;
- 3. The guardian; or
- 4. The executor or administrator of the estate.

(d) If the payment is reissued to an executor or administrator, a

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copy of the appointment order shall be obtained as verification.

Section 4. Authorization of Persons with Mental Illness or Mental Retardation (MIMR) Supplement Program Payment. (1) Method of payment.

(a) The MIMR supplement payment shall be made:

1. Quarterly;

2. By the last day of the month following the month in which the certified quarter ends.

(b) The training reimbursement payment for the MIMR Supplement Program shall be issued within thirty (30) days of receipt of appropriate documentation, as specified in 904 KAR 2:015.

2. Initial payment.

(a) Following the notification of the cabinet by the personal care home (PCH) of its intent to participate, the effective date of the MIMR supplement shall be the first day of a quarter in which certification requirements contained in 904 KAR 2:015 are met.

(b) MIMR approvals shall be made:

1. For the entire quarter during any part of which certification factors are met, unless a conditional rating is received from the Office of the Inspector General; and

2. If a conditional rating occurs, payment shall be made only for eligible months as specified in 904 KAR 2:015.

(3) Subsequent payments shall be made for any month within a quarter in which eligibility factors are met.

(4) Eligible payee.

(a) Payment for the MIMR supplement shall be made to the participating PCH, meeting MIMR certification requirements, for an eligible calendar quarter, as specified in 904 KAR 2:015.

(b) Payment for the MIMR training reimbursement shall be made to the participating PCH.

JOHN L. CLAYTON, Commissioner

VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: May 28, 1997

FILED WITH LRC: May 30, 1997 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: The affected entities are families who apply for or receive benefits under the Kentucky Transitional Assistance Program (K-TAP). The AFDC Program was replaced by the Temporary Assistance for Needy Families (TANF) Block Grant Program called Kentucky Transitional Assistance Program (K-TAP) as the result of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. There are approximately 66,200 families in Kentucky (monthly average) who are currently receiving benefits from K-TAP.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: To be determined after the publication of the notice of intent.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: To be determined after the publication of the notice of intent.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: The individuals who are applicants or recipients of AFDC, now K-TAP, will not have any additional compliance, reporting or paperwork requirements.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no additional costs or savings to the agency as a result of the emergency amendments to this regulation.

2. Second and subsequent years: Same

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds and state funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: To be determined after the publication of the notice of intent.

(b) Kentucky: To be determined after the publication of the notice of intent.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the state is responsible under federal requirements to implement a program funded under 42 USC 601 et seq.

(8) Assessment of expected benefits: The emergency amendments to this administrative regulation is needed to comply with the mandated requirements in 42 USC 601 et seq. and to conform with the mandates found in 904 KAR 2:006E and 2:016E. The Aid to Families with Dependent Children (AFDC) program no longer exists and has been replaced with Kentucky Transitional Assistance Program (K-TAP), the Temporary Assistance for Needy Families (TANF) Block Grant Program. References to Aid to Families with Dependent Children (AFDC) have been changed to Kentucky Transitional Assistance Program (K-TAP) to conform with the provisions in 904 KAR 2:006E and 2:016E and the approved Title IV-A State Plan. One of the mandates contained in 904 KAR 2:006E and the approved Title IV-A State Plan requires a payee for a minor teenage parent determined to be ineligible for Kentucky Transitional Assistance Program (K-TAP) for failure to meet the requirements for living in an adult supervised setting.

(b) State whether a harmful effect on environment and public welfare would result if not implemented: A detrimental effect on public welfare would result if this amendment is not implemented.

(c) If detrimental effect would result, explain detrimental effect: Public assistance benefits received by needy Kentuckians may be jeopardized if Kentucky does not meet the mandated requirements delineated in Kentucky's Title IV-A State Plan as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: References to Aid to Families with Dependent Children (AFDC) have been changed to Kentucky Transitional Assistance Program (K-TAP) to conform with the provisions in 904 KAR 2:006E and 2:016E.

(11) TIERING: Is tiering applied? No. Tiering was not applied since application of policy is applied in a like manner for all individuals as set forth through federal requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 601 et seq.

2. State compliance standards. KRS 205.200

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

STATEMENT OF EMERGENCY
904 KAR 2:055E

The administrative regulation 904 KAR 2:055E, Hearings and appeals, implements the system of hearing provisions for the Kentucky Transitional Assistance Program (K-TAP). This emergency administrative regulation is needed to comply with the mandated requirements pursuant to the approved Title IV-A State Plan as required by 42 USC 601 et seq. and to conform with the provisions found in 904 KAR 2:006E and 2:016E. The passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 has eliminated entitlement to the Aid to Families with Dependent Children (AFDC) Program and has created the Temporary Assistance for Needy Families Block Grant Program, called the Kentucky Transitional Assistance Program (K-TAP) in Kentucky. The Cabinet for Families and Children is required to include the mandatory provisions of 42 USC 601 et seq. in the Title IV-A State Plan. References to Aid to Families with Dependent Children (AFDC) have been changed to Kentucky Transitional Assistance Program (K-TAP), and references to the Job Opportunities and Basic Skills (JOBS) Program have been changed to the Kentucky Works Program to conform with the provisions in 904 KAR 2:006E and 2:016E. The deadline imposed by the Department of Health and Human Services for the complete Title IV-A State Plan for implementation of the mandated requirements of the cabinet's Title IV-A block grant program is October 18, 1996. Therefore, in order to meet this deadline by the U.S. Department of Health and Human Services, this emergency administrative regulation must be placed in effect immediately in order to amend the requirements in 904 KAR 2:055. An ordinary administrative regulation would not allow sufficient time to meet the time frames. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor
VIOLA P. MILLER, Secretary

CABINET FOR FAMILIES AND CHILDREN
Department for Social Insurance
Division of Management and Development

904 KAR 2:055E. Hearings and appeals.

RELATES TO: KRS 205.231, 45 CFR 205.10, 255.2, 42 USC 601 et seq.

STATUTORY AUTHORITY: KRS Chapter 13B, 194.050(1), 205.231, 205.237, 45 CFR 205.10, 251.5, 42 USC 601 et seq., EO 96-862

EFFECTIVE: May 30, 1997

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Insurance and its programs under the Cabinet for Families and Children. The Cabinet for Families and Children shall provide for a system of hearings to be available to any applicant for or recipient of an assistance program who is dissatisfied with any action or inaction on the part of the cabinet. This administrative regulation sets forth the methods by which the hearing requirement is fulfilled for Aid to Families with Dependent Children now called the Kentucky Transitional Assistance Program (K-TAP), the Home Energy Assistance Program, and the State Supplementation Program.

Section 1. Informing the Applicant or Recipient of His Rights. (1) Each applicant or recipient shall be informed of his right to a hearing:

- (a) Orally and in writing when application is made; and
- (b) In writing when an action is taken affecting his claim in accordance with KRS 13B.050.

(2) Each applicant or recipient shall be informed of:

- (a) The method by which he may obtain a hearing; and
- (b) That he may be represented by:
 1. An authorized representative who may be:
 - a. Legal counsel;
 - b. A relative;
 - c. A friend; or
 - d. Other spokesperson; or
 2. Himself.

Section 2. Request for a Hearing. (1) An applicant or recipient or an authorized representative acting on his behalf, may request a hearing by filing a request with the Department for Social Insurance at either:

- (a) The local office; or
- (b) The central office.

(2) The applicant or recipient shall clearly indicate a desire for a hearing by submitting a statement:

- (a) In written form; or
- (b) Orally, later submitted in writing by the applicant or recipient.

(3) A written request for a hearing may be sent to the Cabinet for Families and Children, Division of Administrative Review, Hearing Branch, 275 East Main, Frankfort, Kentucky 40621.

Section 3. Time Limitation for Hearing Request Regarding Assistance Payments. (1) To be considered timely, a written or oral request from an applicant or recipient shall be received by the department within:

- (a) Forty (40) days of the date of the advance notice of adverse action; or
- (b) Thirty (30) days of the notice of:
 1. Denial of an application; or
 2. Decrease or discontinuance of an active case; or
- (c) The time period the action is pending if the hearing issue is delay in action.
 - (2) Up to an additional thirty (30) days for requesting a hearing may be granted if it is determined by the hearing officer that the delay was for good cause in accordance with the following criteria:
 - (a) The applicant or recipient was away from home during the entire filing period; or
 - (b) The applicant or recipient is unable to read or to comprehend the right to request a hearing on the:
 1. Notice of adverse action; or
 2. Notice of decrease or discontinuance; or
 - (c) The applicant or recipient moved resulting in delay in receiving or failure to receive the:
 1. Notice of adverse action; or
 2. Notice of decrease or discontinuance; or
 - (d) Serious illness of the applicant or recipient; or
 - (e) The reason for the delay was no fault of the applicant or recipient, as determined by the hearing officer.

Section 4. Continuation of Assistance Program Benefits. (1) Assistance shall be continued through the month in which the hearing officer's decision is rendered if the request:

- (a) Results from dissatisfaction regarding a proposed discontinuance, suspension or decrease; and
- (b) Is received within ten (10) days of the date on the:
 1. Advance notice of adverse action; or
 2. Notice of decrease or discontinuance.

(2) Assistance shall be reinstated and continued through the month in which the hearing officer's decision is rendered if the

request is:

- (a) Received within twenty (20) days of the date on the:
 - 1. Advance notice of adverse action; or
 - 2. Notice of decrease or discontinuance; and
- (b) The reason for delay meets the good cause criteria contained in Section 3 of this administrative regulation.
- (3) Subsections (1) and (2) of this section shall not apply if the program benefit has been reduced or discontinued as a result of a change in law, regulation, or policy of the cabinet.
- (4) Continued or reinstated benefits are considered overpayments if the agency decision is upheld.
- (5) If the applicant or recipient requests the discontinuance, suspension or decrease in assistance be in effect pending the hearing officer's decision, assistance shall not be continued or reinstated through the month in which the hearing officer's decision is rendered.
- ~~[(6) Continuation or reinstatement of benefits pending a hearing decision shall not apply to child care and supportive services payments for job opportunities and basic skills participants.]~~

Section 5. Acknowledgment of the Request. (1) A hearing request shall be acknowledged by the hearing branch.

(2) The acknowledgment letter shall contain information regarding:

- (a) The hearing process, including the right to case record review prior to the hearing;
 - (b) The right to representation; and
 - (c) A statement that the local office can provide information regarding the availability of free representation by legal aid or a welfare rights organization within the community.
- (3) Subsequent notification shall comply with the requirements of KRS 13B.050.

(a) All parties to the hearing shall be provided at least twenty (20) days timely notice of the date of the hearing to permit adequate preparation of the case.

(b) The applicant or recipient may request less timely notice of the date set for the hearing to expedite the scheduling of the hearing.

(4) A hearing complying with the requirements of KRS Chapter 13B shall be scheduled on a timely basis to assure that no more than ninety (90) days shall elapse from the date of the request to the date of the decision.

Section 6. Withdrawal or Abandonment of Request. (1) The applicant or recipient may withdraw his request for a hearing prior to release of the hearing officer's decision, but he shall be granted the opportunity to discuss withdrawal with his legal counsel or representative, if any, prior to finalizing the action.

(2) A hearing request shall be considered abandoned if the applicant or recipient fails without prior notification to report for the hearing.

(3) A hearing request shall not be considered as abandoned without extending to the applicant or recipient, and, if applicable, his legal counsel or representative, a period of ten (10) days to establish that the failure was for good cause in accordance with good cause criteria contained in Section 3 of this administrative regulation.

Section 7. Applicant's or Recipient's Rights Prior to a Hearing. (1) An applicant or recipient shall receive notice consistent with KRS 13B.050, including:

- (a) His right to legal counsel or other representation;
- (b) The right to review the case record relating to the issue; and
- (c) The right to submit additional information in support of the claim.

(2) When the hearing involves medical issues, a medical assessment by other than the person or persons involved in the original decision shall be obtained at cabinet expense if the hearing officer considers it necessary.

(3) If a medical assessment at cabinet expense is requested by the applicant or recipient and denied by the hearing officer, the

reason for denial shall be set forth in writing.

Section 8. Postponement of a Hearing. (1) The applicant or recipient shall be entitled to a postponement of a hearing if:

- (a) The request for the delay is made prior to the hearing; and
 - (b) The need for the delay is due to an essential reason beyond the control of the applicant or recipient in accordance with good cause criteria contained in Section 3 of this administrative regulation.
- (2) The decision to grant the postponement shall be made by the hearing officer.
- (3) The postponement of the hearing shall not exceed thirty (30) days from the date of the request.

Section 9. Corrective Action for Assistance Program Benefits. (1) If after a review of the case record, but prior to scheduling a hearing, the hearing officer determines that action taken or proposed to be taken is incorrect, he shall authorize corrective action in the form of:

- (a) Assistance to which the applicant or recipient would have been entitled but for the incorrect decision; or
 - (b) If the issue was a proposed action, continuing assistance.
- (2) The applicant or recipient then shall be given the opportunity to withdraw the hearing request, but the hearing shall be scheduled if the applicant or recipient wishes to pursue the request.

Section 10. Conduct of a Hearing. (1) The hearing shall be conducted in accordance with the requirements of KRS 13B.080 and 13B.090.

- (a) The hearing officer shall:
 - 1. Be impartial; and
 - 2. Disqualify himself for any reason set forth in KRS 13B.040.
- (b) The applicant or recipient may challenge the hearing officer by presentation of factual evidence that the impartiality criteria are not met.

(2) The hearing shall be conducted in-state where the applicant or recipient may attend without undue inconvenience.

(3) If necessary to secure full information on the issue, the hearing officer may examine each party who appears and his witnesses.

(4) The hearing officer may schedule a hearing and take additional evidence as is deemed necessary.

(5)(a) Parties to a telephonic hearing who wish to introduce documents or written materials not yet supplied to the opposing parties into the record at the hearing shall immediately mail copies of the documents to the hearing officer and to the opposing party.

(b) All parties to the telephonic hearing shall submit all available documentary evidence to be used during the hearing to the hearing officer and the opposing party prior to convening of the hearing.

(c) Failure to provide both the hearing officer and the opposing party with copies of evidence referenced in paragraphs (a) and (b) of this subsection may result in its being excluded from the record.

Section 11. The Decision. (1) After the hearing is concluded, the hearing officer shall set forth in writing his finding of facts and conclusions of law:

- (a) Specifying the reasons for the decision; and
 - (b) Identifying the supporting evidence and regulations.
- (2) A copy of the decision shall be mailed to:
- (a) The applicant or recipient and his representative; and
 - (b) The local office of the Department for Social Insurance.
- (3) The decision, with respect to the issues considered, shall be final unless further appeal is initiated within twenty (20) days from the date of mailing of the decision.

Section 12. Appeal from Decision of Hearing Officer. (1) Any applicant or recipient or his authorized representative wishing to appeal the decision of a hearing officer may do so by filing an appeal to an appeal board appointed in accordance with KRS 205.231(3).

(2) The appeal request shall be considered timely, when an oral or written request is received in a local office or the hearing branch of the Department for Social Insurance within twenty (20) days of the date on which the hearing officer's decision was mailed; or

(3) If the good cause criteria in Section 3 of this administrative regulation is met, an appeal request received within thirty (30) days of the hearing officer's decision shall be considered timely.

(4) The request shall be:

- (a) Filed in writing or orally, later reduced to writing; and
- (b) Considered filed on the day it is received.

Section 13. Applicant's or Recipient's Rights Prior to Appeal Board Consideration. (1) An appeal to the appeal board shall be acknowledged in writing to the applicant or recipient and his authorized representative.

(2) The acknowledgment shall:

- (a) Offer the opportunity to file a brief or submit new and additional proof; and
- (b) State the tentative date on which the board will consider the appeal.

Section 14. Appeal Board Review. (1) An appeal to the appeal board shall be considered upon:

- (a) The records of the department; and
- (b) The evidence or exhibits introduced before the hearing officer unless the applicant or recipient specifically requests permission to file additional proof.

(2) When an appeal is being considered on the record, the parties may:

- (a) Present written arguments; and
- (b) At the board's discretion, be allowed to present oral arguments.

(3) If needed, the appeal board may direct the taking of additional evidence to resolve the appeal.

(4) Evidence shall be taken by the board after seven (7) days notice to the parties, giving them the opportunity:

- (a) To object to introduction of additional evidence; or
- (b) To rebut or refute any additional evidence.

Section 15. The Appeal Board Decision. (1) The decision of the appeal board, duly signed by members of the board, shall:

(a) Set forth in writing the facts on which the decision is based; and

(b) Except as provided in subsection (2) of this section, be irrevocable in respect to the issues in the individual case unless set aside through the judicial review process pursuant to KRS 13B.140 and 13B.150.

(2) The appeal board shall be allowed to reverse the decision in subsection (1) of this section if the following criteria are met:

(a) The correct determination of eligibility based on incapacity or disability is the only issue being considered in the appeal board decision; and

(b) Within twenty (20) days of the appeal board decision, the applicant or recipient, whose incapacity or disability is the issue of the hearing, receives and provides to the appeal board an award letter for benefits based on disability including:

- 1. Supplemental security income;
- 2. Retirement, survivors and disability insurance;
- 3. Federal black lung benefits;
- 4. Railroad retirement benefits; or
- 5. Veterans Administration benefits based on 100 percent disability.

Section 16. Payments of Assistance. (1) Payments of assistance to carry out decisions of hearing officers or the appeal board shall be made promptly and shall include:

- (a) The month of application; or

(b) Providing it is established that the applicant or recipient was eligible during the entire period in which assistance was withheld, the month in which incorrect action of the cabinet adversely affected the applicant or recipient.

(2) For reversals involving reduction of benefits, action shall be taken to restore benefits within ten (10) days of the receipt of the hearing decision.

Section 17. Limitation of Fees. (1) Although the cabinet and its officers and employees, either in their official or personal capacity, are not liable for payment of any attorneys fees, the cabinet shall, in accordance with KRS 205.237, set the maximum fee that an attorney may charge the applicant or recipient for representation in all categories of public assistance as follows:

(a) Seventy-five (75) dollars for preparation and appearance at hearing before a hearing officer;

(b) Seventy-five (75) dollars for preparation and presentation, including any briefs, of appeals to the appeal board;

(c) \$175 for preparation and presentation, including pleadings and appearance in court, of appeals to the circuit court;

(d) \$300 for preparatory work and briefs and all other matters incident to appeals to the Court of Appeals.

(2) The fee agreed to by the representative and his client within the above maximums shall be deemed to have the approval of the cabinet.

(3) Enforcement of payment of the fee shall be a matter entirely between the counsel or agent and the applicant or recipient. The fee shall not be deducted, either in whole or in part, from the benefit checks otherwise due and payable to the applicant or recipient.

Section 18. Special Provisions Relating to Participants in a Work-related Program under the Kentucky Works [Job Opportunities and Basic Skills] Program. (1) A participant in a work-related program under the Kentucky Works [Job Opportunities and Basic Skills] Program may request a hearing for the resolution of a complaint with respect to:

(a) On-the-job working conditions;

(b) Workers' compensation coverage; and

(c) Wage rates used in calculating the hours of participation required of individuals in [community] work experience programs of the Kentucky Works [Job Opportunities and Basic Skills] Program.

(2) A participant in a work-related program under the Kentucky Works [Job Opportunities and Basic Skills] Program may appeal a hearing decision regarding an issue listed in subsection (1) of this section within twenty (20) days of the receipt of the state's written decision.

(a) The appeal shall be sent to the Office of Administrative Law Judges, U.S. Department of Labor, Vanguard Building, Room 600, 1111 20th Street, NW, Washington, DC 20036.

(b) Copies of the appeal, and any brief in support thereof, shall be sent to:

1. The Assistant Secretary for Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210; and

2. The Assistant Secretary for Family Support, Department of Health and Human Services, 370 L'Enfant Promenade, SW, Sixth Floor, Washington, DC 20447.

(c) The appeal shall contain the following information:

1. The full name, address and telephone number of the Kentucky Works [Job Opportunities and Basic Skills] Program participant;

2. The provisions of the Social Security Act or federal regulations believed to have been violated;

3. A copy of the original complaint filed with the state; and

4. A copy of the state's findings and decision regarding the complaint.

Section 19. Material Incorporated by Reference. (1) The form

necessary for requesting a hearing, appeal, or withdrawal is being incorporated effective June 1, 1997 [1996]. This form is the PAFS-78, revised June, 1997 [May 1, 1996].

(2) Material incorporated by reference may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky, 40621. Office hours are 8 a.m. to 4:30 p.m.

JOHN L. CLAYTON, Commissioner

VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: May 28, 1997

FILED WITH LRC: May 30, 1997 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: The affected entities are families who apply for or receive benefits under the Kentucky Transitional Assistance Program (K-TAP). The AFDC Program was replaced by the Temporary Assistance for Needy Families (TANF) Block Grant Program called Kentucky Transitional Assistance Program (K-TAP) as Reconciliation Act of 1996. There are approximately the result of the Personal Responsibility and Work Opportunity 66,200 families in Kentucky (monthly average) who are currently receiving benefits from K-TAP.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: To be determined after the publication of the notice of intent.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: To be determined after the publication of the notice of intent.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: The individuals who are applicants or recipients of AFDC, now K-TAP, will not have any additional compliance, reporting or paperwork requirements.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Continuation of child care and supportive services payments pending a hearing decision is \$234,000 per year for child care costs and \$80,600 in transportation costs to the agency.

2. Second and subsequent years: Same

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds and state funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: To be determined after the publication of the notice of intent.

(b) Kentucky: To be determined after the publication of the notice of intent.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the state is responsible under federal requirements to implement a program funded under 42 USC 601 et seq.

(8) Assessment of expected benefits: This emergency administrative regulation is needed to conform with the mandates found in

904 KAR 2:006E and 2:016E. Continuation of child care and supportive services payments pending a hearing decision will be additional benefits to recipients while the hearing decision is pending. This change conforms with changes made in 904 KAR 2:016E.

(b) State whether a harmful effect on environment and public welfare would result if not implemented: A detrimental effect on public welfare would result if this amendment is not implemented.

(c) If detrimental effect would result, explain detrimental effect: Public assistance benefits received by needy Kentuckians may be jeopardized if Kentucky does not conform with provisions in 904 KAR 2:006E and 2:016E as delineated in Kentucky's Title IV-A State Plan as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Continuation (for timely requests for a hearing) of child care and transportation payments pending a hearing request will help the recipient stay employed while waiting for a hearing request.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: References to Aid to Families with Dependent Children (AFDC) have been changed to Kentucky Transitional Assistance Program (K-TAP), and references to the Job Opportunities and Basic Skills (JOBS) Program have been changed to the Kentucky Works Program to conform with the provisions in 904 KAR 2:006E, and 2:016E.

(11) TIERING: Is tiering applied? No. Tiering was not applied since application of policy is applied in a like manner for all individuals as set forth through federal requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 601 et seq.

2. State compliance standards. KRS 205.200, 205.231, 205.237.

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

STATEMENT OF EMERGENCY

904 KAR 2:060E

The administrative regulation 904 KAR 2:060E, Delegation of power for oaths and affirmations, implements the designation of certain cabinet employees to administer oaths and affirmations for the Kentucky Transitional Assistance Program (K-TAP). This emergency administrative regulation is needed to comply with the mandated requirements pursuant to the approved Title IV-A State Plan as required by 42 USC 601 et seq. and to conform with the provisions found in 904 KAR 2:006E and 2:016E. The passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 has eliminated entitlement to the Aid to Families with Dependent Children (AFDC) Program and has created the Temporary Assistance for Needy Families Block Grant Program, called the Kentucky Transitional Assistance Program (K-TAP) in Kentucky. The Cabinet for Families and Children is required to include the mandatory provisions of 42 USC 601 et seq. in the Title IV-A State Plan. References to Aid to Families with Dependent Children (AFDC) have been changed to Kentucky Transitional Assistance Program (K-TAP) to conform with the provisions in 904 KAR 2:006E and 2:016E. The deadline imposed by the Department of Health and Human Services for the complete

Title IV-A State Plan for implementation of the mandated requirements of the cabinet's Title IV-A block grant program is October 18, 1996. Therefore, in order to meet this deadline by the U.S. Department of Health and Human Services, this emergency administrative regulation must be placed in effect immediately in order to amend the requirements in 904 KAR 2:060. An ordinary administrative regulation would not allow sufficient time to meet the time frames. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor
 VIOLA P. MILLER, Secretary

CABINET FOR FAMILIES AND CHILDREN
 Department for Social Insurance
 Division of Management and Development

904 KAR 2:060E. Delegation of power for oaths and affirmations.

RELATES TO: KRS 205.170, 45 CFR 205.32, 42 USC 601 et seq.

STATUTORY AUTHORITY: KRS 194.050, 205.170, 42 USC 601 et seq., EO 96-862

EFFECTIVE: May 30, 1997

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Insurance and its programs under the Cabinet for Families and Children. The Cabinet for Families and Children [~~Human Resources~~] shall administer a money payment program under 42 USC 601 et seq., Kentucky Transitional Assistance Program (K-TAP) [~~Aid to Families with Dependent Children~~], and provide supplemental payments to persons who are aged, blind or have a disability. KRS 205.170 empowers the Secretary for Human Resources or his duly authorized representative to administer oaths and affirmations to obtain information from an applicant or recipient in the administration of the Aid to Families with Dependent Children now called Kentucky Transitional Assistance Program (K-TAP) and state supplementation programs. This administrative regulation sets forth the designation of certain employees by the secretary of the cabinet to administer oaths and affirmations to an applicant or a recipient of a money grant in limited situations.

Section 1. Specific Worker Designation. The following classifications of employees shall be designated as duly authorized representatives of the Secretary of the Cabinet for Families and Children [~~Human Resources~~] to administer an oath or affirmation to an applicant or recipient:

- (1) A field services supervisor;
- (2) A field services manager; and
- (3) A regional administrator.

Section 2. Purpose. An oath or affirmation shall be administered by a designated representative to an applicant or recipient for the purpose of obtaining his sworn statement:

(1) Regarding a claim that a check issued from a money payments program of the cabinet has been:

- (a) Lost;
- (b) Misplaced; or
- (c) Stolen;
- (2) To request a replacement check; or
- (3) When a check endorsement is viewed.

Section 3. Process. (1) An affidavit shall be used when:

- (a) A check is reported lost or stolen to request a replacement check within six (6) months of intended receipt; or
- (b) [~~When~~] A check endorsement is viewed.

(2) If the payee reports nonreceipt, loss or theft of a check, the payee shall come into the office to complete an affidavit within four (4) work days or reporting nonreceipt of the check. This process will place a stop payment on the check.

(3) If the original check has been cashed, a photocopy of the cashed check shall be forwarded to the local office.

(a) The payee shall view the endorsement; and

(b) If the signature is not that of the payee, the payee shall sign the affidavit stating the signature on the photocopy is not his signature and he received no benefit from the cashing of the check.

(4) The affidavit shall also be used to request reissuance of the check in question.

(5) The time limitation that a lost or stolen check may be replaced shall not exceed six (6) months from the date of intended receipt.

Section 4. Material Incorporated by Reference. (1) Forms necessary for the administration of an oath or affirmation for the Kentucky Transitional Assistance Program (K-TAP) [~~Aid to Families with Dependent Children~~] and State Supplementation Programs are being incorporated effective June 1, 1997 [~~November, 1993~~]. These forms include:

(a) PA-60, revised 5/97 [4/95];

(b) PA-61, revised 7/94.

(2) Material incorporated by reference may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

JOHN L. CLAYTON, Commissioner

VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: May 28, 1997

FILED WITH LRC: May 30, 1997 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: The affected entities are families who apply for or receive benefits under the Kentucky Transitional Assistance Program (K-TAP). The AFDC Program was replaced by the Temporary Assistance for Needy Families (TANF) Block Grant Program called Kentucky Transitional Assistance Program (K-TAP) as the result of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. There are approximately 66,200 families in Kentucky (monthly average) who are currently receiving benefits from K-TAP.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: To be determined after the publication of the notice of intent.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: To be determined after the publication of the notice of intent.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: The individuals who are applicants or recipients of AFDC, now K-TAP, will not have any additional compliance, reporting or paperwork requirements.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no additional costs or savings to the agency as a result of the emergency amendments to this regulation.

2. Second and subsequent years: Same

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds and state funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: To be determined after the publication of the notice of intent.

(b) Kentucky: To be determined after the publication of the notice of intent.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the state is responsible under federal requirements to implement a program funded under 42 USC 601 et seq.

(8) Assessment of expected benefits: The emergency amendments to this administrative regulation is needed to comply with the mandated requirements in 42 USC 601 et seq. and to conform with the mandates found in 904 KAR 2:006E and 2:016E. The Aid to Families with Dependent Children (AFDC) Program no longer exists and has been replaced with Kentucky Transitional Assistance Program (K-TAP), the Temporary Assistance for Needy Families (TANF) Block Grant Program. References to Aid to Families with Dependent Children (AFDC) have been changed to Kentucky Transitional Assistance Program (K-TAP) to conform with the provisions in 904 KAR 2:006E and 2:016E and requirements in the approved Title IV-A State Plan. Time limitations for the replacement of a lost or stolen check is set at 6 months from the date of intended receipt.

(b) State whether a harmful effect on environment and public welfare would result if not implemented: A detrimental effect on public welfare would result if this amendment is not implemented.

(c) If detrimental effect would result, explain detrimental effect: Public assistance benefits received by needy Kentuckians may be jeopardized if Kentucky does not comply with the provisions found in 904 KAR 2:006E and 2:016E pursuant to our approved Title IV-A state plan as required by 42 USC 601 et seq.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: References to Aid to Families with Dependent Children (AFDC) have been changed to Kentucky Transitional Assistance Program (K-TAP) to conform with the provisions in 904 KAR 2:006E and 2:016E.

(11) TIERING: Is tiering applied? No. Tiering was not applied since application of policy is applied in a like manner for all individuals as set forth through federal requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 601 et seq.

2. State compliance standards. KRS 205.200, 205.170.

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

COMPILER'S NOTE: The administrative regulations published in this section were amended by the promulgating agency and the Administrative Regulation Review Subcommittee on June 10, 1997, unless otherwise noted.

**COUNCIL ON HIGHER EDUCATION
(As Amended)**

13 KAR 2:080. State Autism Training Center.

RELATES TO: KRS 164.981 through 164.9819 [164.010]

STATUTORY AUTHORITY: KRS 164.9815 [164.981-164.9819]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.981 to 164.9819 requires [The 1996 General Assembly authorized] the creation of a State Autism Training Center and assigns [assigned] overall responsibility for its operation to the Council on Higher Education. [The authorizing language of the statute is KRS 164.981-164.9819.] The Council on Higher Education shall [is to] award a contract to a public institution of higher education for the operation of the State Autism Training Center. This [An] administrative regulation defines [is required by the authorizing statute and also is necessary in order to define] the parameters for the operation of the center and for access to services.

Section 1. Definitions. [The following terms, when used in this administrative regulation, shall be given the meaning set forth in this section:]

(1) ["Autism" means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three (3), that adversely affects educational performance.

(2) ["Autistic-related disabilities of communication and behavior" means disorders of verbal and nonverbal communication and repetitive, stereotyped, and restricted patterns of behavior.

(2) [(3)] "Board" means the Citizens Advisory Board [as set forth in KRS 164.981-164.9819 and created in Section 4 of this administrative regulation to advise the council and the center's director on the operation of the State Autism Training Center].

[(4)] "Center" means the Autism Training Center, operated under a memorandum of agreement between the council and a public institution, described in KRS 164.981-164.9819, which shall be known as the State Autism Training Center.

(5) ["Client" means a person with the primary diagnosis of autism or autistic-like behavior.]

(3) [(6)] "Contract" means the memorandum of agreement developed and entered into by the Council on Higher Education and a public higher education institution for the purpose of operating the center.

(4) [(7)] "Public institution" means a state university.

[(8)] "Council" means the Council on Higher Education.

(9) ["Expenses" means those reasonable and customary expenditures related to training and treatment of eligible clients as set forth in this administrative regulation.]

Section 2. Contract for the Operation of a State Autism Training Center, [Supplemental Information] and Plan [of Operation]. (1) [The council shall contract with a public institution for the operation of a State Autism Training Center.

(2) The contract awarded by the council pursuant to KRS 164.9811(2) shall be for two (2) years with a provision for an additional two (2) years, if agreed upon by both parties.

(2) [(3)] The contract shall include provision for:

(a) An annual report of activities, including an assessment of the center's performance, prepared by the public institution, reviewed by the board, and submitted to the council;

(b) Payment by the council to the public institution;

(c) An annual budget for the operation of the center, including a statement of projected revenues and expenditures; and

(d) A plan prepared by the public institution establishing [setting forth] the activities and objectives to be performed annually.

[(4)] Supplemental information provided to the council by the public institution shall include a schedule of:

(a) Fees charged to sending agencies; and

(b) Charges for the reimbursement of trainee team or client expenses, if any.]

(3) [(6)] The plan [of operation] shall stipulate the level and degree of services to be provided in exchange for appropriated state funds and other funds federal, state, local, or private. The contract and plan [of operation] shall establish [set] the limits of the degree and level of services to be provided, and the public institution shall not be required to perform additional services unless compensation is provided and agreed upon by both parties.

Section 3. Operation of the State Autism Training Center. (1) [The public institution shall provide the following services:

(a) Individual and direct family assistance in the home, community, and school;

(b) Technical assistance and consultation services, including specific intervention and assistance for a client of the center, the client's family, and the school district;

(c) Professional training programs that include developing, providing, and evaluating preservice and in-service training in state-of-the-art practices for personnel who work with the populations served by the centers and their families;

(d) Public education programs to increase awareness of autism, autistic-related disabilities of communication and behavior, dual sensory impairments, and sensory impairments with other handicapping conditions.

(2) Operation of the center shall be under the direction and control of the public institution which shall be responsible for compliance with all applicable federal and state laws.

(2) [(3)] The primary method of providing services shall be through the use of trainee teams. Trainee teams shall consist, when possible, of an eligible client, a professional from a local service agency, and the client's guardian or one (1) or both parents.] The public institution shall designate [have responsibility for designating] a trainee team for each client.

[(4)] The center's assistance is not intended to supplant other responsibilities of state and local agencies. The school district has primary responsibility for providing the appropriate educational program for a client of school age.]

(3) [(5)] The public institution shall exercise due diligence in maintaining the center's eligibility for federal funds.

Section 4. Citizens Advisory Board. (1) The public institution shall create a Citizens Advisory Board and appoint the members by September 30, 1997, pursuant to KRS 164.9817 [to advise the council and the center director on matters of policy]. The board shall review the assessment of the center's performance.

(2) [The Citizens Advisory Board shall be composed of the following:

(a) Parents or guardians of clients eligible for the center's program, fifty (50) percent;

- ~~(b) Persons from professional fields relating to autism, forty (40) percent;~~
- ~~(c) Knowledgeable lay persons, ten (10) percent;~~
- ~~(d) One (1) council representative and one (1) Kentucky Department of Education representative; and~~
- ~~(e) The director of the center, who shall be an ex officio, nonvoting member.~~

~~(3) The board shall not meet ~~[not]~~ less than quarterly.~~

~~(3) [(4)] The center's director shall give adequate notice of each meeting [all meetings] to the members of the board.~~

~~(4) [(5)] The center's director shall publish the minutes of each meeting [the meetings] of the board and each advisory action taken by the board. [including any advisory actions taken.]~~

LEONARD V. HARDIN, Chair

APPROVED BY AGENCY: March 14, 1997

FILED WITH LRC: March 28, 1997 at 11 a.m.

KENTUCKY REVENUE CABINET
Office of General Counsel
Division of Tax Policy and Research
(As Amended)

103 KAR 16:200. Consolidated Kentucky corporation income tax return.

RELATES TO: KRS 141.200

STATUTORY AUTHORITY: KRS 131.130(1), 141.050(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.200 establishes the conditions for the filing of a consolidated return. KRS 141.050(4) requires the cabinet to establish required income tax forms. This administrative regulation establishes terms, forms, and procedures required for the implementation of KRS 141.200. [This administrative regulation is necessary to explain and clarify the provisions of KRS 141.200 pertaining to the filing of a consolidated return. This administrative regulation will inform and educate corporations which must file Revenue Form 720, Kentucky Corporation Income and License Tax Return.]

Section 1. Definitions. (1) "Combined return" means a Kentucky corporation income tax return by which Kentucky taxable income is reported and attributed to members of a unitary business group using the unitary business concept.

(2) "Common parent corporation" means the member of an affiliated group:

(a) That [which] directly owns stock meeting the requirements of Section 1504(a)(2) of the Internal Revenue Code in at least one (1) other member of the affiliated group; and

(b) Whose stock is not owned directly by any other member of the affiliated group as required by Section 1504(a)(2) of the Internal Revenue Code.

(3) ~~[(4)]~~ "Election period" means a period of ninety-six (96) consecutive calendar months beginning with the first day of the first taxable year for which an election to file a consolidated return is made and ending on the last day of the taxable year which includes the 96th consecutive calendar month provided the affiliated group remains in existence in accordance with Treasury Regulation §1.1502-75(d).

(4) ~~[(3)]~~ "[Corporations] Exempt from taxation" means the corporations listed [any corporation enumerated] in KRS 141.040(1)(a) through (h).

(5) "Unitary business concept" means a method of determining taxable income within a state based on the unitary business group's activities within that state.

(6) "Unitary business group" means a group of related corporations which share or exchange value as evidenced by the existence

of the following characteristics:

(a) The operation of one (1) corporation is dependent upon, or contributes to, the operation of another corporation;

(b) There is a unity of ownership, operation, and use among the corporations; or

(c) The corporations exhibit functional integration, centralization of management, and economies of scale.

Section 2. Election to File a Consolidated Return. (1) General rule.

(a) An [The] election to file a consolidated return shall be made by the common parent corporation on behalf of all members of the affiliated group by filing "Election to File Consolidated Kentucky Corporation Income Tax Return", Revenue Form 722, ~~[Election to File Consolidated Kentucky Corporation Income Tax Return,]~~ on or before the date prescribed by KRS 141.160 [law] for filing the return, or as extended pursuant to KRS 141.170 [including extensions], for the first taxable year for which the election is made.

(b) Except as provided by [in] subsections (2) and (3) of this section, if "Election to File Consolidated Kentucky Corporation Income Tax Return", [failure to file] Revenue Form 722, is not filed within the period prescribed by paragraph (a) of this subsection:

1. An affiliated group shall be deemed not to have made an election; and

2. [within the prescribed time period shall mean that no election has been made by the affiliated group to file a consolidated return and that] Each member of the affiliated group subject to tax pursuant to [under] KRS 141.040 shall [be required to] file a separate return pursuant to KRS 141.200(2).

(2) Transition rules.

(a) ~~[If an affiliated group filed a consolidated return without filing Revenue Form 722] For a [the] taxable year beginning prior to December 31, 1995 and ending on or after December 31, 1995, if an affiliated group filed [in order for the affiliated group to elect to file] a consolidated return and did not file "Election to File Consolidated Kentucky Corporation Income Tax Return", it may elect to file a consolidated return beginning with the taxable year if it mails "Election to File Consolidated Kentucky Corporation Income Tax Return" no later than February 15, 1998, [beginning with that taxable year, Revenue Form 722 shall be mailed] to the Revenue Cabinet, Corporation Tax Section, P.O. Box 1302, Frankfort, Kentucky 40602-1302, [no later than February 15, 1998].~~

(b) For a taxable year ending on or after December 31, 1995, and prior to April 5, 1996, if the members of an affiliated group filed separate returns or a combined return, ~~[for the taxable year ending on or after December 31, 1995, but prior to April 5, 1996,]~~ the affiliated group:

1. May elect to file a consolidated return beginning with the [that] taxable year by filing "Election to File Consolidated Kentucky Corporation Income Tax Return", [Revenue Form 722 with the cabinet] no later than February 15, 1998; and

2. Shall file a consolidated return amending the separate or combined returns no later than [shall be filed by] February 15, 1998.

(3) Taxable years following an election period.

(a) Except as provided in paragraph (b) of this subsection, for any taxable year beginning after the expiration of the election period, each member of the affiliated group subject to Kentucky corporation income tax in accordance with KRS 141.040 shall file a separate return unless the affiliated group elects to file a consolidated return.

(b) The filing of a consolidated return on or before the date prescribed by KRS 141.160 [law] for filing the return or as extended pursuant to KRS 141.170 [including extensions], for the first taxable year that begins after ~~[beginning immediately following]~~ the expiration of an election period, shall:

1. Constitute a new election to file a consolidated return; and

2. [shall] Establish a new election period.

(c) If the expiration of an election period occurs because an

affiliated group ceases to exist, each member of the affiliated group subject to Kentucky corporation income tax in accordance with KRS 141.040 shall file a separate return beginning with the first taxable year immediately following the date the affiliated group ceases to exist unless it becomes a member of another affiliated group which has elected to file a consolidated return.

(4) Effect of an election.

(a) An election to file a consolidated return shall be [is] an irrevocable election binding on both the cabinet and the affiliated group for the election period.

(b) The administrative provisions of Treasury Regulation §1.1502-75(a) to (c) shall not apply for Kentucky purposes.

Section 3. Corporations Included in a Consolidated Return. (1) If [When] a consolidated federal return is filed. If a [any] member of the affiliated group electing to file a consolidated Kentucky return pursuant to Section 2 of this administrative regulation is included in a consolidated federal return for the taxable year, the Kentucky return shall [must] include the [same] corporations that:

(a) Were included in the consolidated federal return for the taxable year ; and

(b) Are not [except these corporations] exempt from taxation.

(2) If [When] a consolidated federal return is not filed. If no member of an [the] affiliated group electing to file a consolidated Kentucky return pursuant to Section 2 of this administrative regulation is included in a consolidated federal return for the taxable year, the Kentucky return shall include the [all] members of the affiliated group as defined in Section 1504(a) of the Internal Revenue Code and related regulations that are not [except these corporations] exempt from taxation.

Section 4. Carryover or Carryback of Items of Loss, Deduction or Credit. (1) Carryover or carryback between a separate return and a consolidated return. If a separate return was filed for taxable years prior to the taxable years for which a consolidated return is filed, and a carryover or carryback occurs between the separate return and the consolidated return, the carryover or carryback amount shall be:

(a) Limited as provided by [in accordance with the provisions of] Section 1502 of the Internal Revenue Code and related regulations; and

(b) [shall be] Adjusted for the differences between KRS Chapter 141 and the Internal Revenue Code.

(2) Carryover or carryback between a combined return and a consolidated return.

(a) A combined return shall be deemed a consolidated return for the purpose of determining a carryover or carryback amount, if a:

1. Combined return using the unitary business concept was filed for taxable years ending on or before December 30, 1995; and

2. Consolidated return is filed for taxable years ending on or after December 31, 1995; and

3. Carryover or carryback occurs between the combined return and the consolidated return.

(b) The carryover or carryback amount shall be:

1. Limited as provided by Section 1502 of the Internal Revenue Code and related regulations; and

2. Adjusted for the differences between KRS Chapter 141 and the Internal Revenue Code. [If a combined return using the unitary business concept was filed for taxable years ending on or before December 30, 1995, and if a consolidated return is filed for taxable years ending on or after December 31, 1995, and if a carryover or carryback occurs between the combined return and the consolidated return, the combined return shall be deemed a consolidated return for the purposes of determining the carryover or carryback amount, and the carryover or carryback amount shall be limited in accordance with the provisions of Section 1502 of the Internal Revenue Code and

related regulations and shall be adjusted for the differences between KRS Chapter 141 and the Internal Revenue Code.]

Section 5. Deferred Intercompany Transactions. If, during a year when a separate or combined return was filed, a gain or loss on a deferred intercompany transaction was deferred for federal purposes, and [but] was not deferred for Kentucky purposes, the gain or loss, when recognized for federal purposes, shall be adjusted for Kentucky purposes to reflect the prior reporting of the transaction.

Section 6. Required Forms. (1) [Revenue Form 720, "Kentucky Corporation Income and License Tax Return", Revenue Form 720, shall contain the following:

- (a) Information identifying the affiliated group;
- (b) The taxable income computation;
- (c) The income tax computation;
- (d) The license tax computation;
- (e) The tax payment summary; and
- (f) The signature of a principal officer or chief accounting officer.

(2) "Kentucky Corporation Income and License Tax Return", Revenue Form 720, Schedule A, Apportionment and Allocation, shall be attached to Revenue Form 720, if applicable, and shall contain the [following]:

- (a) [The] Computation of the apportionment fraction;
- (b) [The] Apportionment and allocation of income;
- (c) [The] Beginning and end of year balances of Kentucky real and tangible property; and
- (d) [The] Beginning and end of year balances of total real and tangible property.

(3) "Kentucky Affiliations and Payment Schedule", Revenue Form 851-K, [Kentucky Affiliations and Payment Schedule,] shall be attached to "Kentucky Corporation Income and License Tax Return", Revenue Form 720 and shall contain the [following]:

(a) [The] Name of each member of the affiliated group subject to Kentucky corporation license tax pursuant to [in accordance with] KRS 136.070;

(b) [The] Six (6) digit Kentucky Account Number for each corporation listed pursuant to [in accordance with] paragraph (a) of this subsection; and

(c) [The] Amount remitted for each corporation.

(4)(a) A copy of the Federal Form 7004, "Application for Automatic Extension of Time to File Corporation Income Tax Return", or [Revenue Form 41A720SL, "Application for Six (6) Month Extension of Time to File Kentucky Corporation Income and License Tax Return", Revenue Form 41A720SL, shall [may] be filed to obtain an extension of time to file "Kentucky Corporation Income and License Tax Return", Revenue Form 720 pursuant to [in accordance with] the provisions of KRS 131.081(11), 131.170 and 141.170. Revenue Form 41A720SL [and] shall contain the [following]:

1. [The] Name of each member of the affiliated group subject to Kentucky corporation license tax pursuant to [in accordance with] KRS 136.070;

2. [The] Six (6) digit Kentucky Account Number for each corporation listed pursuant to [in accordance with] paragraph (a) of this subsection; and

3. [The] Amount remitted for each corporation.

(b) An application for extension filed pursuant to paragraph (a) of this subsection [Revenue Form 41A720SL filed for an affiliated group for Kentucky corporation income tax] shall constitute an extension for each member of the affiliated group subject to Kentucky corporation license tax pursuant to [in accordance with] KRS 136.070.

Section 7. Filing a Consolidated Return. "Kentucky Corporation Income and License Tax Return", Revenue Form 720, shall:

(1) Be filed by the common parent corporation for the affiliated group; and

(2) [shall] Contain the following forms, if applicable, attached in the following order:

(a) "Election to File Consolidated Kentucky Corporation Income Tax Return", [(4)] Revenue Form 722;

(b) "Kentucky Affiliations and Payment Schedule", [(2)] Revenue Form 851-K;

(c) "Kentucky Corporation Income and License Tax Return", [(3)] Revenue Form 720, Schedule A "Apportionment and Allocation Schedule";

(d) [(4)] A copy of pages 1 and 4 of Federal Form 1120, U.S. Corporation Income Tax Return;

(e) [(5)] Federal Form 851, Affiliations Schedule;

(f) [(6)] Forms necessary to support credits reported on the consolidated return;

(g) [(7)] The schedules of gross income and deductions for each member of the affiliated group prepared in columnar form in accordance with Treasury Regulations §1.1502-76;

(h) [(8)] Balance sheets for each member of the affiliated group prepared in columnar form in accordance with Treasury Regulations §1.1502-76;

(i) [(9)] The schedules of receipts, property and payroll for each member of the affiliated group shall be prepared in columnar form; and

(j) [(10)] A copy of "Application for Six (6) Month Extension of Time to File Kentucky Corporation Income and License Tax Return", Revenue Form 41A720SL or a copy of Federal Form 7004, Application for Automatic Extension of Time To File Corporation Income Tax Return.

Section 8. Method of Filing a Kentucky License Tax Return. (1) If the common parent corporation is subject to Kentucky license tax pursuant to [in accordance with] KRS 136.070, "Kentucky Corporation Income and License Tax Return", Revenue Form 720, reporting the consolidated return computation shall [also] report the separate Kentucky license tax computation for the common parent corporation.

(2) If a [any] member of the affiliated group other than the common parent corporation is subject to Kentucky license tax pursuant to [in accordance with] KRS 136.070, a separate "Kentucky Corporation Income and License Tax Return", Revenue Form 720, reporting the license tax computation, shall be submitted with, but not attached to, the consolidated return submitted by the common parent corporation.

(3) If the common parent corporation qualifies and elects the consolidated license tax provision of KRS 136.071, "Kentucky Corporation Income and License Tax Return", Revenue Form 720, shall report the consolidated income tax computation for the members of the affiliated group and the consolidated license tax computation for those corporations that are considered as one (1) pursuant to [in accordance with] KRS 136.071.

(4) If a [any other] member of the affiliated group other than the common parent corporation qualifies and elects the consolidated license tax provision of KRS 136.071, "Kentucky Corporation Income and License Tax Return", Revenue Form 720, shall:

(a) Report the consolidated license tax computation for those corporations that are considered as one (1) pursuant to [in accordance with] KRS 136.071; and

(b) [shall] Be submitted with, but not attached to, the consolidated return submitted by the common parent corporation.

Section 9. Incorporation by Reference. (1) The following forms are incorporated by reference:

(a) [Revenue Form 720, 1996] "Kentucky Corporation Income and License Tax Return and Instructions", Revenue Form 720 (1996);

(b) [are incorporated by reference].

(2) ~~"Revenue Form 41A720SL (9-96);~~ "Application for Six (6) Month Extension of Time to File Kentucky Corporation Income and License Tax Return", Revenue Form 41A720SL (9/96); [is incorporated by reference.]

(c) [(4)] ~~"Revenue Form 722 (6-96);~~ "Election to File Consolidated Kentucky Corporation Income Tax Return", Revenue Form 722 (6/96); and [is incorporated by reference.]

(d) [(3)] ~~"Revenue Form 851-K (9-96);~~ "Kentucky Affiliations and Payment Schedule", Revenue Form 851-K (9/96). [is incorporated by reference.]

(2) [(5)] These forms may be obtained or inspected at the Kentucky Revenue Cabinet, 200 Fair Oaks Lane, Frankfort, Kentucky 40620, or at any Kentucky Revenue Cabinet Taxpayer Service Center, Monday through Friday, 8 a.m. to 4:30 p.m.

MARGARET A. HANDMAKER, Secretary

APPROVED BY AGENCY: March 14, 1997

FILED WITH LRC: March 14, 1997 at noon

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(As Amended)

201 KAR 2:106. Pharmacy, manufacturer, or distributor closures.

RELATES TO: KRS 315.035, 315.036

STATUTORY AUTHORITY: KRS 315.036, 315.191(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS

315.191(1)(a) requires the board to promulgate administrative regulations relating to subject matters governed by KRS Chapter 315. This administrative regulation establishes requirements relating to closure of business by licensees. [Closure by permittees of the Kentucky Board of Pharmacy shall be responsibly effected in accordance with all federal, state, and applicable laws in the interest of public welfare.]

Section 1. Definitions. As used in this administrative regulation:

(1) "Permanent closure" means a [the] licensee:

(a) Ceases to do business and permanently closes; and

(b) Does not file [without an] application for a pharmacy license for the same location [being filed];

(2) "Voluntary closure" means a [any] closing or abandonment of premises resulting from:

(a) Chronic mental or physical deterioration; or [for any reason other than involuntary, that constitutes]

(b) A deviation from the [these] business hours listed on the current permit application or amendments filed thereto; or

(c) Cessation of the practice of pharmacy at the licensed location for a [any] reason other than permanent or involuntary closure.

(3) "Involuntary closure" means an interruption of formal business activity resulting from:

(a) Acute illness or incapacitation;

(b) Death;

(c) Fire, flood or other natural disaster;

(d) Bankruptcy proceedings; or

(e) Court, government, or Board of Pharmacy action.

Section 2. Procedures for Closure. (1) Permanent closure.

(a) A [The] licensee shall conspicuously place a sign notifying the public thirty (30) days in advance of the:

1. Termination date of business; and

2. [The] Name and address of the licensee to which prescription files or other pertinent records will [shall] be transferred.

(b) Except when prevented by the exercise of another party's legal rights;

1. The sign shall remain in place for a period of thirty (30) days after ~~the~~ ~~[such]~~ closure; and

2. All efforts shall be undertaken to assure a smooth transition of uninterrupted service to ~~those~~ ~~[all]~~ affected by the closure.

(c) ~~A~~ ~~(b)~~ The licensee shall inform the Board of Pharmacy, Drug Enforcement Administration, ~~["DEA"]~~ and the Cabinet for Human Resources by written notice fifteen (15) days prior to the anticipated closing and include the following information:

1. Date of business termination; and

2. Name, address, and DEA number of registrant to whom the prescription or controlled drugs are to be transferred.

(d) In the absence of directives to the contrary from ~~the Drug Enforcement Administration~~ ~~[DEA]~~, the Board of Pharmacy, or ~~[and]~~ the Cabinet for Human Resources, the transfer shall ~~[may]~~ be effected on the assigned date.

(e) The transferor and the transferee shall each maintain ~~[appropriate]~~ copies of the following documents relating to transferred controlled substances for at least two (2) years:

1. U.S. Official Order Forms, DEA-222 Schedule II [Order Forms]; and

2. Schedules III, IV, and V Invoices) for a period of at least two (2) years.

(f) ~~[3.]~~ Upon termination, ~~a~~ ~~[the]~~ licensee shall:

1. Remove all signs pertinent to pharmacy or drugs from the building and premises; and

2. Return the voided permits, the Drug Enforcement Administration ~~[DEA]~~ registration, and unused Schedule II Order Forms to their respective office of issue.

(g) The posting of the sign required by paragraph (a) of this subsection shall not be required if:

1. An application for a pharmacy license for the same location is filed; or

2. During a sale of a pharmacy, prescription records are transferred to another permitted pharmacy that is within five (5) miles of the location of the pharmacy that is sold and owned by the purchasing entity.

~~[4. When an application for a pharmacy license for the same location is filed, or during a sale of a pharmacy where prescription records are transferred to another permitted pharmacy within five (5) miles and under common ownership of the purchasing entity, the posting of the notice of closure in paragraph (a) of this subsection is not required.]~~

(2) Voluntary closure.

(a) ~~A~~ ~~[Any]~~ pharmacy or distributor licensed by the Kentucky Board of Pharmacy whose hours of operation have deviated over a period of five (5) consecutive working days from those of record at the Board of Pharmacy office shall immediately notify the board, verbally and in writing ~~of~~ ~~[, stating]~~ the reason for the deviation and the anticipated period of continuance.

(b) Upon receipt of ~~the~~ ~~[such]~~ notice, the Board of Pharmacy, with full cooperation of the licensee, shall make ~~[such]~~ arrangements ~~[as]~~ it deems necessary to provide adequate and continued security and control of all drugs, chemicals, poisons, and devices owned or controlled by the licensee.

(c) If normal operation cannot resume within sixty (60) days, or if satisfactory agreements cannot be reached between the Board of Pharmacy, the licensee, or his designated representative, the:

1. Permit shall be revoked; and

2. ~~[the]~~ Board of Pharmacy shall notify the Cabinet for Human Resources to assume control and responsibility of any drug, chemical, poison, or device deemed necessary ~~[and]~~ in any ~~[such]~~ manner deemed appropriate.

(d) If the Board of Pharmacy or the Cabinet for Human Resources or its agents liquidate or arrange for the liquidation of items specified in paragraphs (b) and (c) of this subsection ~~[said stock]~~, the board or the Cabinet for Human Resources may retain a portion of the proceeds realized from the liquidation equal to ~~the~~ ~~[these]~~ expenses

incurred.

(3) Involuntary closure.

(a) Within five (5) days of involuntary closure, a licensee, or person authorized to act on his behalf, shall:

1. Notify the board in writing; and

2. Guarantee the safety and control of the licensed premises in a manner that will allow continued storage of controlled substances consigned to the board permittees for sixty (60) days after the effective date of the involuntary closure.

(b) Within sixty (60) days after the effective date of the involuntary closure, a licensee shall effect arrangements for the lawful sale or other disposition of drugs and substances requiring board licensure.

(c) The board may assume control and responsibility of substances it deems necessary for disposition, if after the expiration of the sixty (60) day period following the effective date of involuntary closure:

1. A sale or other disposition has not been effected; or

2. An agreement between the board, and the licensee or person authorized to act on behalf of the licensee, has not been reached. ~~[The licensee, or next responsible person employed by or related to the licensee, shall within five (5) days provide notice to the Board of Pharmacy office. He shall offer a guarantee of acceptable safety and control of the licensed premises that will allow continued storage of these privileged substances consigned to Board of Pharmacy permittees for up to sixty (60) days beyond the effective date of the involuntary closure. During this time, arrangements for the lawful sale or other disposition of all drugs and substances requiring Board of Pharmacy licensure shall be effected. If the sixty (60) day grace period lapses without a sale or other disposition having been effected by the designated party, or if a satisfactory agreement cannot be reached between the Board of Pharmacy, the licensee, or his designated representative, the Board of Pharmacy may assume control and responsibility of all substances it deems necessary for appropriate disposition.]~~

(b) ~~The licensee or designated agent shall fully cooperate with the Board of Pharmacy to promote the efficient administration of such action and shall be financially liable to the board should this administration incur expenses by the board.]~~

Section 3. Duties and Responsibilities of Licensee. A licensee or person authorized to act on his behalf shall:

(1) Fully cooperate with the board to promote the efficient administration of action required by the provisions of this administrative regulation; and

(2) Be financially liable to the board for expenses incurred by the board in its implementation of the provisions of this administrative regulation.

MICHAEL B. WYANT, President

APPROVED BY AGENCY: April 1, 1997

FILED WITH LRC: April 1, 1997 at 2 p.m.

GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing
(As Amended)

201 KAR 20:057. Scope and standards of practice of advanced registered nurse practitioners.

RELATES TO: KRS 314.011(7), 314.042, 314.193(2)

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.193(2) [Chapter 314] requires that standards in the performance of advanced registered nursing practice be established by administrative regulation to safeguard the public health and welfare. This administrative

regulation establishes the scope and standards of practice for an advanced registered nurse practitioner.

Section 1. Definitions. (1) "Collaboration" means the relationship between the advanced registered nurse practitioner and a physician in the provision of prescription medication and includes both autonomous and cooperative decision-making, with the advanced registered nurse practitioner and the physician contributing their respective expertise.

(2) "Collaborative practice agreement" means a written document which defines the scope of prescriptive authority for the advanced registered nurse practitioner and is jointly approved by the advanced registered nurse practitioner and at least one (1) physician.

(3) "Established protocol" means a written document jointly approved by the physician and the advanced registered nurse practitioner delineating the areas of practice for the advanced registered nurse practitioner, which is reviewed at least annually [and includes these areas of practice related to diagnostic tests, and prescription of medications and treatments]. [In delineating the areas of practice in the established protocol, the advanced registered nurse practitioner shall conform to the standards of practice of the appropriate nursing organization incorporated by reference in Section 2 of this administrative regulation. Any limitations beyond that set out in the scope and standards of practice statements shall be delineated in the established protocol.]

[(2) "Collaborative practice agreement" means a written document jointly approved by the advanced registered nurse practitioner and at least one (1) physician which defines the scope of prescriptive authority for the advanced registered nurse practitioner. In this context, collaboration refers to the relationship between the advanced registered nurse practitioner and physician(s) in the provision of prescription medication. The collaboration includes both autonomous and cooperative decision making, with advanced registered nurse practitioners and physicians contributing their respective expertise.]

Section 2. The practice of the advanced registered nurse practitioner shall be in accordance with the standards and functions defined in the **following** scope and standards of practice statements for each specialty area. **A limitation beyond the scope and standards of practice statement shall be stated in the established protocol.** [as adopted by the board. The board has adopted the following scopes and standards of practice of these national organizations recognized pursuant to 201 KAR 20:056, Section 3(2):]

(1) American Nurses' Association, The Scope of Practice of the Primary Health Care Nurse Practitioner, 1985, Standards of Practice for the Primary Health Care Nurse Practitioner, 1987;

(2) American Nurses' Association, a Statement on Psychiatric - Mental Health Clinical Nursing Practice and Standards of Psychiatric - Mental Health Clinical Nursing Practice, 1994;

(3) American Nurses' Association, Statement on the Scope of Medical-Surgical Nursing Practice, 1980;

(4) American Nurses' Association, The Role of the Clinical Nurse Specialist, 1986;

(5) American Association of Nurse Anesthetists, Scope of Practice, 1992 Standards for Nurse Anesthesia Practice, 1989, and Patient Monitoring Standards, 1992;

(6) American College of Nurse-Midwives, Standards for the Practice of Nurse-Midwifery, 1993;

(7) Association of Women's Health, Obstetric and Neonatal Nurses and National Association of Nurse Practitioners in Reproductive Health, The Women's Health Nurse Practitioner: Guidelines for Practice and Education, 1996; [Nurses' Association of the American College of Obstetricians and Gynecologists (now known as the Association of Women's Health, Obstetric, and Neonatal Nurses), The OB/GYN Women's Health Nurse Practitioner, Role Definition, Competencies and Educational Guidelines, 1990;]

(8) National Association of Nurse Practitioners in Reproductive Health, Standards of Practice and Education for the Women's Health Nurse Practitioner, 1994;

(9) National Association of Pediatric Nurse Associates and Practitioners, Scope of Practice for Pediatric Nurse Practitioners, 1990, Standards of Practice for Pediatric Nurse Practitioners, 1987;

(10) ~~[(9)]~~ American Academy of Nurse Practitioners, Standards of Practice, 1993[;] and

~~[(10) American Academy of Nurse Practitioners,] Scope of Practice for Nurse Practitioners, 1993;~~

(11) American Nurses' Association/American Association of Critical Care Nurses, Standards of Clinical Practice and Scope of Practice for the Acute Care Nurse Practitioner, 1995; and

(12) National Association of Neonatal Nurses, Neonatal Nurse Practitioners: Standards of Education and Practice, 1992.

Section 3. In the performance of advanced registered nursing practice [aets], the advanced registered nurse practitioner shall practice in accordance with established protocol and the collaborative practice agreement, if applicable, and shall seek consultation or referral in those situations outside the advanced registered nurse practitioner's scope of practice. ~~[where practice requirements are not included in the established protocol.]~~

Section 4. Advanced registered nursing practice shall include prescribing treatments, drugs and devices and ordering diagnostic tests which are consistent with the scope and standard of practice of the advanced registered nurse practitioner.

Section 5. Advanced registered nursing practice shall not preclude the practice by the advanced registered nurse practitioner of registered nursing practice as defined in KRS 314.011(5).

Section 6. An advanced registered nurse practitioner who has a written collaborative practice agreement pursuant to KRS 314.042(8) shall file a copy of it with the board within thirty (30) days of entering it. The agreement shall include the name, address, phone number and license or registration number of both the advanced registered nurse practitioner and **each physician who is a party to the agreement [physician(s)].** It shall also include the specialty area of practice of the advanced registered nurse practitioner. **A [Any] change in the collaborative agreement shall be reported to the board within thirty (30) days.**

Section 7. Prescribing without a written collaborative practice agreement shall constitute a violation of KRS 314.091(1).

Section 8. The board may make an unannounced monitoring visit ~~[visits]~~ to an advanced registered nurse practitioner to **determine if the advanced registered nurse practitioner's practice is consistent with all regulatory requirements.**

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "The Scope of Practice of the Primary Health Care Nurse Practitioner", 1985 Edition, American Nurses' Association;

(b) "Standards of Practice for the Primary Health Care Nurse Practitioner", 1987 Edition, American Nurses' Association;

(c) "A Statement on Psychiatric - Mental Health Clinical Nursing Practice and Standards of Psychiatric - Mental Health Clinical Nursing Practice", 1994 Edition, American Nurses' Association;

(d) "Statement on the Scope of Medical-surgical Nursing Practice", 1980 Edition, American Nurses' Association;

(e) "The Role of the Clinical Nurse Specialist", 1986 Edition, American Nurses' Association;

(f) "Scope of Practice", 1992 Edition, American Association

of Nurse Anesthetists;

(g) "Standards for Nurse Anesthesia Practice", 1989 Edition, American Association of Nurse Anesthetists;

(h) "Patient Monitoring Standards", 1992 Edition, American Association of Nurse Anesthetists;

(i) "Standards for the Practice of Nurse-midwifery", 1993 Edition, American College of Nurse-midwives;

(j) "The Women's Health Nurse Practitioner: Guidelines for Practice and Education", 1996 Edition, Association of Women's Health, Obstetric and Neonatal Nurses and National Association of Nurse Practitioners in Reproductive Health;

(k) "Standards of Practice and Education for the Women's Health Nurse Practitioner", 1994 Edition, National Association of Nurse Practitioners in Reproductive Health;

(l) "Scope of Practice for Pediatric Nurse Practitioners", 1990 Edition, National Association of Pediatric Nurse Associates and Practitioners;

(m) "Standards of Practice for Pediatric Nurse Practitioners", 1987 Edition, National Association of Pediatric Nurse Associates and Practitioners;

(n) "Standards of Practice", 1993 Edition, American Academy of Nurse Practitioners;

(o) "Scope of Practice for Nurse Practitioners", 1993 Edition, American Academy of Nurse Practitioners;

(p) "Standards of Clinical Practice and Scope of Practice for the Acute Care Nurse Practitioner", 1995 Edition, American Nurses' Association/American Association of Critical Care Nurses; and

(q) "Neonatal Nurse Practitioners: Standards of Education and Practice", 1992 Edition, National Association of Neonatal Nurses.

(2) This material may be inspected, copied, or obtained at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

LINDA J. THOMAS, President

APPROVED BY AGENCY: April 18, 1997

FILED WITH LRC: April 18, 1997 at noon

**TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(As Amended)**

301 KAR 2:178. Deer hunting on wildlife management areas.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.180, 150.340, 150.360, 150.370, 150.390, 150.395, 150.990

STATUTORY AUTHORITY: 150.025(1), 150.620 [~~150.170, 150.175~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) and 150.620 grant the department authority to set hunting seasons, bag limits, methods of taking and other matters necessary to carry out the purpose of KRS Chapter 150 on wildlife management areas. This administrative regulation establishes deer hunting dates, application procedures and other matters pertaining to deer hunting on wildlife management areas that differ from statewide requirements. [To establish deer hunting administrative regulations on wildlife management areas and other public lands open to deer hunting. The purpose of this amendment is to adjust dates and other hunting requirements on wildlife management areas.]

Section 1. Definitions. (1) "Modern gun season" means the ten (10) consecutive-day period beginning the second Saturday in November.

(2) "Private inholding" means privately owned property completely

surrounded by a WMA.

(3) "Quota hunt" means WMA deer hunts, including youth hunts, whose participants are selected by a random drawing.

(4) "Statewide deer requirements" means the season dates, zone descriptions and other requirements for deer hunting established in 301 KAR 2:172 and 2:174.

(5) "Wildlife management area" means a tract of land the department controls or manages through ownership, lease, license or cooperative agreement.

(6) "WMA" means a wildlife management area.

(7) "WMA tag" means a carcass tag the department issues to hunters for use on WMA deer hunts.

Section 2. General WMA Requirements. (1) Unless specified otherwise in this administrative regulation, statewide deer requirements apply to WMAs.

(2) If specific deer hunting dates are given for a WMA in this administrative regulation, persons shall hunt deer only on those dates.

(3) On WMAs, Westvaco Public Hunting Areas, the Daniel Boone National Forest, Reelfoot National Wildlife Refuge, Land Between the Lakes and the Big South Fork National River [Rivers] and Recreation Area, a person [persons]:

(a) Shall not use nails, spikes, screw-in devices, wire or tree climbers for attaching tree stands or climbing trees.

(b) May use portable stands and climbing devices that do not injure trees.

(c) Shall not place a portable stand in a tree [~~portable stands in trees~~] more than two (2) weeks before opening day, and shall remove them within one (1) week following the last day, of each hunting period.

(d) Shall plainly mark the portable stand with his [~~portable stands with their~~] name and address.

(e) Shall not use existing permanent tree stands.

(4) Limits.

(a) A hunter may take two (2) deer from the West Kentucky WMA [~~and Higginson-Henry WMAs~~].

(b) A hunter shall not take more than one (1) deer from each of the other WMAs listed in Section 5 of this administrative regulation.

(5) The owner of a private inholding or his guest:

(a) [~~Owners of private inholdings or their guests~~] May hunt on the owner's lands without application;

(b) [~~but~~] Shall follow all other requirements for the WMA which surrounds the inholding.

(6) A person [~~Persons~~] shall not hunt on private inholdings when deer hunting is not allowed on the surrounding WMA.

(7) Except to travel through a WMA on established public roads or to use areas designated open by signs, a person [~~persons~~] without a valid quota hunt permit shall not enter a WMA during quota hunts on that area.

(8) A person [~~Persons~~] hunting any species or a person [~~persons~~] accompanying a hunter [~~them~~] shall wear hunter orange:

(a) Meeting the requirements specified in 301 KAR 2:272 [~~2:274~~].

(b) On a WMA [~~WMAs~~] when firearms are permitted for deer hunting.

(9) A person [~~Persons~~] shall not:

(a) Enter portions of WMAs marked by signs as closed to public access; or

(b) Hunt in portions of WMAs marked by signs as closed to hunting.

Section 3. Quota Hunt Applications. (1) A person [~~Persons~~] whose name is [~~names are~~] not drawn shall not hunt during quota hunts.

(2) A person [~~Persons~~] wishing to participate in quota hunts shall apply on forms furnished by the department.

(3) More than one (1) person [~~hunter~~] shall not apply per form.

(4) Four (4) or fewer persons may apply as a party by stapling their applications together and mailing them in the same envelope.

(5) A person [Hunters] over sixteen (16) years old shall not apply to more than one (1) quota hunt.

(6) A person [Persons] at least ten (10) but not yet sixteen (16) years old by the scheduled hunt date may apply for:

- (a) One (1) quota hunt;
- (b) One (1) Ballard WMA youth hunt; and
- (c) One (1) other youth hunt.

(7) An applicant who submits [Applicants who submit] multiple applications or fails [fail] to meet application requirements shall be disqualified.

(8) An applicant [Applicants] shall stamp and self-address the application [applications].

(9) An application [Applications] shall be postmarked no later than August 31 [June 30] [August 31].

(10) The commissioner may extend the application deadline if the production or distribution of forms is delayed.

Section 4. Quota Hunt Procedures. (1) A person selected by random drawing for a quota hunt:

(a) [Persons] Shall hunt on assigned dates and in assigned areas.

(b) [2] Hunters May use firearms, archery equipment or crossbows during the quota hunt [quota hunts].

(c) Unless otherwise specified in Section 5 of this administrative regulation, a person [3] Hunters shall check in before, and check out at the completion of, the quota hunt.

(d) If checking out is not required for a quota hunt, a person shall check his deer in accordance with the provisions of Section 16 of 301 KAR 2:172.

(2) [4] When checking in, a person [persons required to possess hunting licenses and deer permits] shall show:

(a) A hunting license, unless exempted from license requirements by KRS 150.170;

(b) A valid quota hunt permit;

(c) Proof of identify, including Social Security number; and

(d) A current deer permit with an unfilled tag valid for the hunt; or

(e) For youth hunts, a completed hunter's portion of a current deer season game check card.

(3) [5] A person whose name does not appear on a quota hunt permit shall not use that permit.

(4) [6] The youth hunt permit shall admit the person whose name appears on the permit and one (1) adult. The adult shall not be required to:

(a) Possess a hunting license or deer permit; or

(b) Apply in advance.

(5) A [7] quota youth hunt participant [participants] shall tag deer with WMA tags issued during [when they] check in.

(6) [8] Deer taken during quota youth hunts do not count toward season limits specified in 301 KAR 2:172. [statewide deer requirements.]

(7) A person [9] Persons drawn for quota hunts on Ballard, Higginson-Henry, Kleber, Taylorsville Lake and Yellowbank WMAs shall not apply to the same area quota hunt for the next three (3) seasons.

Section 5. WMA Hunting Dates and Requirements. (1) Ballard WMA.

(a) Quota youth hunts, any deer [antlered] or antlerless deer as determined by a random drawing at check in [specified on permit]: two (2) consecutive days [Saturdays and Sundays] beginning:

1. The third Saturday in October.

2. The fourth Saturday in October.

(b) Quota hunt, any deer or antlerless deer as determined by a random drawing at check in: the first Saturday and Sunday of November.

(c) [10] Statewide deer requirements apply to the 300 acre tract south of Terrell Landing Road.

(d) A person shall not hunt after 5:30 p.m.

(2) Beaver Creek WMA.

(a) Archery hunt, antlered deer: the third Saturday in September through January 15, [October 1 through December 31,] except during the quota hunt.

(b) Quota hunt, antlered deer: two (2) consecutive days beginning the first Saturday in November.

(3) Buckhorn Lake WMA shall be closed to deer hunting.

(4) Cane Creek WMA.

(a) Archery hunt, [antlered deer]: Zone 6 archery season dates and harvest restrictions apply. [October 1 through December 31.]

(b) Gun hunt, antlered deer: the second Saturday in November.

(5) [4] Central Kentucky WMA.

(a) Archery hunt, any deer:

1. Wednesdays between the fourth week in September through December 17, except during scheduled field trials as posted on the area bulletin board.

2. December 18 through January 15.

(b) A deer hunter [Deer hunters] shall check in and check out.

(6) [5] Clay WMA.

(a) Archery hunt, any [antlered] deer: October 15 through the day before the modern gun season, except during the quota hunt.

(b) Quota hunt, antlered deer: the first Saturday and Sunday in November.

(c) Deer hunters shall check in and check out.

(7) [6] Cyprus AMAX-Robinson Forest WMA.

(a) A person [Persons] shall not hunt deer:

1. On the main block of Robinson Forest.

2. With a firearm [firearms] during the modern gun season.

(b) Archery and muzzle-loader seasons shall correspond to statewide requirements, except that a person shall not archery hunt [no archery hunting] during the youth quota hunt.

(c) Youth quota hunt, any [antlered] deer [only]: two (2) consecutive days beginning the fourth Saturday in October.

1. A juvenile hunter and the adult [Hunters and the adults] who will accompany him [them] during the hunt shall participate in a training and safety seminar.

2. The department shall notify successful applicants of the time and place of the training and safety seminar.

(d) A deer hunter [Deer hunters] shall check in and out.

(8) [7] Daviess County WMA shall be [3] closed to deer hunting.

(9) [8] Dewey Lake WMA.

(a) Archery hunts: any deer, the third Saturday in September through January 15 [October 1 through December 31], except persons shall not archery hunt during quota hunts. [3]

1. The youth quota hunt; or

2. The modern gun deer season.

(b) Youth quota hunt, any deer or antlerless deer as determined by a random drawing at check in [antlerless deer]: two (2) consecutive days beginning the first Saturday in November.

(c) Quota hunt, any deer or antlerless deer as determined by a random drawing at check in: two (2) consecutive days beginning the first Saturday in December.

(d) A deer hunter [Deer hunters] shall check in and check out.

(10) [9] Fishtrap Lake WMA.

(a) Archery hunt, antlered deer: third Saturday in September through January 15, [October 1 through December 31,] except during the quota hunt.

(b) Quota hunt, antlered deer: two (2) consecutive days beginning the fourth Saturday in November.

(11) [10] Grayson Lake WMA.

(a) Youth quota hunts, any deer:

1. Two (2) consecutive days beginning the first Saturday in November.

2. Two (2) consecutive days beginning the first Saturday in December.

(b) Archery and crossbow hunt, any deer: the third Saturday in September through January 15, [except during quota hunts]. [October

~~1 through December 31.]~~

(c) The portion of the area west of Route 1496 and east of Bruin Creek, the Bruin Creek fork of Grayson Lake, and Grayson Lake north of the Bruin Creek Fork is open to youth quota hunting and closed to archery and crossbow hunting.

(d) A deer hunter ~~[Deer hunters]~~ shall check in and shall check out.

(e) Quota hunters shall check out before 6 p.m.

(12) [(11)] Green River Lake WMA.

(a) Quota hunt, antlered deer ~~[any deer]~~ ~~[antlered deer]~~: two (2) consecutive days beginning the first Saturday in December.

(b) Archery hunt, any deer: the third Saturday in September through January 15 ~~[October 1 through December 31]~~, except during the quota hunt.

(13) [(12)] Higginson-Henry WMA.

(a) Quota hunt, any deer ~~[antlered]~~ or antlerless deer as determined by a random drawing at check in ~~[specified on permit]~~: two (2) consecutive days beginning the first Saturday in December.

(b) Archery hunts.

1. Antlerless deer, the third Saturday in September through October 15, ~~[October 1 through 15]~~.

2. Any deer, October 16 through December 31, except during the quota hunt.

(c) A deer hunter ~~[Deer hunters]~~ shall check in and check out.

(14) Kentucky River WMA.

(a) Quota hunts, Zone 4 harvest restrictions apply:

1. Five (5) consecutive days beginning the second Saturday in November.

2. Five (5) consecutive days beginning the day after the first quota hunt ends.

(b) Archery hunt, any deer: the third Saturday in September through January 15, except during the quota hunts.

(c) Quota hunters may hunt without checking in or out.

(d) Statewide deer requirements shall apply for muzzle-loader, **crossbow**, and youth hunt seasons.

(15) [(14)] Kleber WMA.

(a) Quota hunt, any deer: two (2) consecutive days beginning the first Saturday in December.

(b) Archery hunt, any deer: the third Saturday in October through January 15 ~~[December 31]~~, except during the quota hunt.

(c) Deer hunters shall check in and check out.

~~[(14) Kentucky River WMA. Statewide deer requirements apply, except that persons shall not hunt deer on Saturdays or Sundays during the modern gun deer season.]~~

~~(16) [(15)] Lapland WMA (including the Indiana Hardwoods Tract). Statewide seasons apply, except that persons shall not hunt deer on Saturdays or Sundays during the modern gun deer season.]~~

~~(a) Quota hunts, Zone 3 harvest restrictions apply:~~

~~1. Five (5) consecutive days beginning the second Saturday in November.~~

~~2. Five (5) consecutive days beginning the day after the first quota hunt ends.~~

~~(b) Archery hunt, any deer: the third Saturday in September through January 15, except during the quota hunts.~~

~~(c) Quota hunters may hunt without checking in or out.~~

~~(d) Statewide deer requirements shall apply for muzzle-loader, **crossbow**, and youth hunt seasons.~~

(17) Curtis Gates Lloyd WMA.

(a) Quota hunts, Zone 3 harvest restrictions apply:

1. Five (5) consecutive days beginning the second Saturday in November.

2. Five (5) consecutive days beginning the day after the first quota hunt ends.

(b) Archery hunt, any deer: the third Saturday in September through January 15, except during the quota hunts.

(c) Quota hunters may hunt without checking in or out.

(d) Statewide deer requirements shall apply for muzzle-loader,

crossbow, and youth hunt seasons.

~~[(16) Lloyd and Mullins WMAs. Statewide seasons apply, except that persons shall not hunt deer on Saturdays or Sundays during the modern gun deer season.]~~

(18) [(17)] Mill Creek WMA.

(a) Archery hunt, any ~~[antlered]~~ deer: the third Saturday in September ~~[October 15]~~ through January 15, except during the quota hunt ~~[the day before the modern gun season, and the day after the quota hunt through December 31]~~.

(b) Quota hunt, antlered deer: two (2) consecutive days beginning the first Saturday in November ~~[December]~~.

(19) Mud Camp Creek WMA.

(a) Quota hunts, Zone 4 harvest restrictions apply:

1. Five (5) consecutive days beginning the second Saturday in November.

2. Five (5) consecutive days beginning the day after the first quota hunt ends.

(b) Archery hunt, any deer: the third Saturday in September through January 15, except during the quota hunts.

(c) Quota hunters may hunt without checking in or out.

(d) Statewide deer requirements shall apply for muzzle-loader, **crossbow**, and youth hunt seasons.

(20) Mullins WMA.

(a) Quota hunts, Zone 4 harvest restrictions apply:

1. Five (5) consecutive days beginning the second Saturday in November.

2. Five (5) consecutive days beginning the day after the first quota hunt ends.

(b) Archery hunt, any deer: the third Saturday in September through January 15, except during the quota hunts.

(c) Quota hunters may hunt without checking in or out.

(d) Statewide deer requirements shall apply for muzzle-loader, **crossbow**, and youth hunt seasons.

(21) [(19)] Obion Creek WMA.

(a) Quota hunt, any deer: two (2) ~~[three (3)]~~ consecutive days beginning the first Saturday ~~[Friday]~~ in November.

(b) Archery hunt, any deer: the third Saturday in September through January 15 ~~[October 1 through December 31]~~, except during the quota hunt.

(22) [(20)] Paintsville Lake WMA.

(a) Quota hunt, antlered deer: two (2) consecutive days beginning the first Saturday in November.

(b) Archery hunt, any deer: the third Saturday in September through January 15 ~~[October 1 through December 31]~~, except no archery hunting during the quota hunt ~~[or the modern gun deer season]~~.

(c) A deer hunter ~~[Deer hunters]~~ shall check in and check out.

(23) [(21)] Peabody WMA.

(a) Quota hunt ~~[hunts]~~, any deer: ~~[-~~

~~4-]~~ five (5) consecutive days beginning the second Saturday in November. Quota hunters may hunt without checking in or out.

(b) Gun hunt, any deer:

~~[-]~~ five (5) consecutive days beginning the day after the last day of the ~~[first]~~ quota hunt.

(c) ~~[(b)]~~ Muzzleloader hunt, any deer: seven (7) ~~[two (2)]~~ consecutive days beginning the second ~~[third]~~ Saturday in December ~~[October]~~.

(d) ~~[(a)]~~ Archery hunt, any deer: the third Saturday of September ~~[October 1]~~ through January 15, except during quota hunt ~~[hunts]~~.

(e) The youth hunt shall be open under statewide requirements.

(24) [(23)] Pennyrile WMA.

(a) Quota hunt, antlered or antlerless deer as determined by a random drawing at check in ~~[any deer]~~: two (2) consecutive days beginning the first Saturday in November.

(b) Archery hunts: ~~[hunt, any deer: October 1 through January 15, except during quota hunts.]~~

1. Antlerless deer, the third Saturday in September through

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October 15.

2. Any deer, October 16 through January 15, except during the quota hunt.

(c) Quota hunters shall check out by 6 p.m. daily.

(d) Archery hunters shall check in and check out.

(25) [(22)] Pioneer Weapons WMA. Statewide requirements apply except that a person:

(a) ~~[(Hunters)]~~ Shall not use a breech-loading gun;

(b) May use a crossbow during the entire archery season. ~~[(modern guns.)]~~

~~(b) Crossbows may be used during the entire archery season. [(26) [(29)] Redbird WMA.~~

(a) Archery hunt, antlered deer: the third Saturday in September through January 15, except during the gun hunt.

~~[(1. October 1 through the day before the modern gun season.~~

~~2. The third Thursday in November through December 31.]~~

(b) Gun hunt, antlered deer: two (2) consecutive days beginning the second Saturday in November.

(c) Gun deer hunters shall check deer at the Redbird Ranger District Office.

(27) [(24)] Stewart Island WMA.

(a) Quota hunt, any deer: two (2) consecutive days beginning on the last Saturday in October.

(b) Quota hunt applicants shall be present at 10 a.m. central daylight time on the third Saturday of September in downtown Smithland to participate in a public drawing.

(c) Archery hunt, any deer: the third Saturday in September through October 14.

(28) [(25)] Swan Lake WMA: closed to deer hunting.

(29) R. F. Tarter.

(a) Quota hunts, Zone 4 harvest restrictions apply:

1. Five (5) consecutive days beginning the second Saturday in November.

2. Five (5) consecutive days beginning the day after the first quota hunt ends.

(b) Archery hunt, any deer: the third Saturday in September through January 15, except during the quota hunts.

(c) Quota hunters may hunt without checking in or out.

(d) Statewide deer requirements shall apply for muzzle-loader, crossbow, and youth hunt seasons.

(30) [(26)] Taylorsville Lake WMA.

(a) Archery hunt, any deer: the third Saturday in September through January 15 [October 1 through December 31], except during the quota hunts.

(b) Quota hunt, any deer:

1. Two (2) consecutive days beginning the first Saturday in November.

2. Two (2) consecutive days beginning the first Saturday in December.

(c) Hunters shall check in and check out daily.

(31) [(27)] Tradewater WMA.

(a) Quota hunt, antlered or antlerless deer as determined by a random drawing at check in [any deer]: two (2) consecutive days beginning the first Saturday in November.

(b) Archery hunts: [hunt, any deer: October 1 through January 15, except during the quota hunt.]

1. Antlerless deer, the third Saturday in September through October 15.

2. Any deer, October 16 through January 15, except during the quota hunt.

(c) Quota hunters shall check out by 6 p.m. daily.

(d) Archery hunters shall check in and check out.

(32) [(28)] Twin Knobs Campground. Quota hunt, any deer: [two (2) consecutive days beginning] the second Saturday in December for persons with a disability which impairs their mobility.

[(29) West Kentucky National Guard Training Unit.

(a) Shotgun quota hunt any deer: two (2) consecutive days

beginning the first Saturday in December.

(b) Bow and muzzle-loader quota hunt, any deer: five (5) consecutive days beginning the third Monday of December.]

(33) [(30)] West Kentucky WMA.

(a) Archery hunts, any deer, except that a person [persons] shall not archery hunt for nine (9) [eight (8)] consecutive days beginning the Saturday following Thanksgiving, or the day before and during quota hunts:

1. The third Saturday in September through December 11 [October 1 through December 12] on tracts one (1) through seven (7).

2. December 15 [16] through January 15 on tracts one (1) through seven (7) and in designated posted zones.

(b) Quota hunts, any deer.

1. Two (2) consecutive days beginning the third Saturday in November.

2. Two (2) consecutive days beginning the second Saturday in December.

(c) Youth quota hunt, any deer: two (2) consecutive days beginning the first Saturday in November.

(d) Crossbow hunt, any deer: the day following the first quota ~~[youth]~~ hunt for twelve (12) consecutive days.

(e) Gun hunters shall not use rifles or handguns.

(f) Persons shall not carry firearms in posted zones.

(g) A person shall not take more than two (2) deer from this WMA.

1. Two (2) deer may be taken by archery:

a. One (1) deer shall be antlerless and shall be tagged with a [the] statewide tag.

b. [2-] The other deer may be antlered or antlerless and shall be tagged with a WMA tag issued on the area.

2. [3-] One (1) deer may be taken by gun; it shall be tagged with a state [the WMA] tag.

3. [4-] The department shall not issue more than one (1) WMA tag to an individual.

(h) A deer hunter ~~[Deer hunters]~~ shall check in and check out.

(34) [(31)] Westvaco public hunting areas. Statewide deer requirements apply; in addition, a person [persons] hunting on Westvaco property:

(a) Shall possess a Westvaco Hunting Permit.

(b) Shall not hunt from or place a tree stand within fifty (50) yards of the property line.

(c) The portion of the area south of Westvaco Road shall be closed to public access between November 1 and March 15.

(35) [(32)] White City WMA.

(a) Archery hunt, any deer: the third Saturday in September through January 15, except during the quota hunts. [October 1 through December 31.]

(b) Quota hunts, any deer.

1. Five (5) consecutive days beginning the second Saturday in November.

2. Five (5) consecutive days immediately following the first quota hunt.

(c) A quota hunter may hunt without checking in or out.

(36) [(33)] Yatesville WMA. Statewide deer requirements apply except:

(a) A person shall not take antlerless deer during the first two (2) days of the modern gun season.

(b) A deer hunter shall check in and shall check out. [that deer hunters shall check in and check out.]

(37) [(34)] Yellowbank WMA.

(a) Quota youth hunt, antlered or antlerless deer as determined by a random drawing at check in [specified on permit]: two (2) consecutive days beginning the first Saturday in November.

(b) Archery hunts.

1. Antlered deer: the third Saturday in September through October 14. [October 1 through 14.]

2. Any deer: October 15 through January 15, except during the

quota hunt. [December 31.]

(c) A deer hunter [Deer hunters] shall check in and check out.

~~(38) [(36)] Zilpo Campground. Quota hunt, any deer: [two (2) consecutive days beginning] the second Saturday in December for persons with a disability which impairs their mobility.~~

Section 6. Incorporation by Reference. (1) "Application for Quota Hunt", (October, 1996 edition), Department of Fish and Wildlife Resources, is incorporated by reference.

(2) It may be inspected, copied, or obtained at Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: March 7, 1997

FILED WITH LRC: April 14, 1997 at 2 p.m.

DEPARTMENT OF AGRICULTURE
Division of Animal Health
(As Amended)

302 KAR 20:180. Restrictions equine viral arteritis.

RELATES TO: KRS 257.020, 257.030

STATUTORY AUTHORITY: KRS 257.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.030 authorizes the board to establish necessary quarantines and other measures to control the movement of livestock into, through, or within Kentucky. This administrative regulation establishes restrictions to protect the thoroughbred industry from the spread of equine viral arteritis in Kentucky and to control the disease in Kentucky. [To protect the thoroughbred industry from the spread of Equine Viral Arteritis within the borders of the Commonwealth of Kentucky and to control the disease in the Commonwealth.]

Section 1. Definitions. As used in this administrative regulation unless the context clearly requires otherwise:

(1) "Book" or "booking" means the contracting or scheduling of a mare to breed to a stallion.

(2) "Chief livestock health official" means the State Veterinarian of Kentucky.

(3) "Cover" means the act of breeding a stallion to a mare.

(4) "EAV" means equine arteritis virus, the organism which causes the disease equine viral arteritis.

(5) "EVA" means equine viral arteritis which is a communicable disease in equine.

(6) "Sero negative" means a horse has reacted negatively to a blood test for EVA.

(7) "Sero positive" means a horse has demonstrated a positive reaction in serum neutralization with a titer of greater than one (1) to four (4) to a blood test for EVA.

(8) "Shedder" or "shedding" means an equine has been determined to have EAV in its body and is capable of transmitting the EAV to other equine.

(9) "Vaccinated" or "vaccination" means an equine has been vaccinated with an approved EVA modified live virus vaccine and the vaccination status has been kept current in accordance with the manufacturer's recommendations. ["EVA" means equine viral arteritis a communicable disease in equidae;

(2) "EAV" means equine arteritis virus, the organism which causes the disease equine viral arteritis;

(3) "Vaccinated" or "vaccination" means equine vaccinated with

an approved EVA modified live virus vaccine and the vaccination status kept current in accordance with the manufacturers recommendations;

(4) [(3)] "Sero positive" horse means the horse has demonstrated a positive reaction in serum neutralization with a titer of greater than one (1) to four (4) to a blood test for EVA;

(5) [(4)] "Sero negative" horse means the horse has reacted negatively to a blood test for EVA;

(6) [(5)] "Book or booking" means the contracting of mares to breed to stallions or the scheduling of mares to breed to stallions;

(7) [(6)] "Chief livestock health official" means the State Veterinarian of the Commonwealth of Kentucky;

(8) [(7)] "Cover" means the act of breeding a stallion to a mare;

(9) [(8)] "Shedder or shedding" means equine that have been determined to have EAV present in the body and is capable of being transmitted to other equines;

(10) [(9)] "Identified or Identification" of equine means identification by breed, color, age, sex, tattoo and markings; and

(10) "EAV" means equine arteritis virus, the organism which causes the disease equine viral arteritis.]

Section 2. EVA Shedding [Sero Positive] Stallions. [Sero positive stallions shall be handled in the following manner:] [(1)] A [All] thoroughbred stallion [stallions] known to be shedding EAV [EVA] shall not be permitted to breed until the chief livestock health official determines that the stallion does not pose a threat of transmitting EAV. In making this determination, the chief livestock health official shall consider whether the requirements of subsections (2) and (3) of this section will be complied with by the farm on which the shedding stallion is located. The following restrictions shall apply to a shedding stallion that is permitted to breed: [In determining whether a shedding stallion poses a threat of spreading the virus the chief livestock health official shall consider whether the farm where the shedding stallion is located can comply with the restrictions for permitting the breeding of shedders found in paragraphs (b) and (c) of this subsection. When the chief livestock health official determines that a shedding stallion can meet the requirements the following control measures shall apply:]

(1) An owner or agent of a mare [(a) Owners or agents of mares] booking or seeking to book a mare to a [to known] shedding stallion [stallions] shall be notified in writing by the owner or agent that [ef] the stallion is classified as an EVA shedder. A written copy of the booking confirmation shall be sent to the chief livestock health official. [as to the classification of the stallion as a shedder at the time of booking and copy of written notification sent to the chief livestock health official:]

(2) A shedding stallion [(b) Shedding stallions] shall be housed, handled and bred in a facility isolated from a nonshedding stallion. [stallions:]

(3) A shedding stallion shall be bred to a mare that:

(a) Has been vaccinated against EVA at least twenty-one (21) days prior to breeding; or

(b) Demonstrates an EVA titer from vaccination or exposure to EVA, if the serological EVA test to determine the mare is EVA sero positive was conducted no sooner than November 1 of the previous calendar year for the following breeding season.

[(c) Shedding stallions shall be bred only to mares that have been vaccinated against EVA at least twenty-one (21) days prior to breeding or to mares that demonstrate an EVA titer from vaccination or exposure to EVA. [are sero positive from prior vaccination or exposure to EVA.] The serological EVA test to confirm mares are EVA sero positive must be [testing on said positive mares must have been] conducted no sooner than November 1 of the previous calendar year for the following breeding season.]

Section 3. Sero Positive Nonshedding Stallions. (1) The following restrictions shall apply to a nonshedding stallion that was

previously classified as a shedding stallion:

(a) During the first breeding season following the stallion's classification as a nonshedder, the first five (5) sero negative mares covered by the stallion shall have a blood sample collected for an EVA test twenty-eight (28) days after breeding.

(b) During the second breeding season, the stallion shall be bred to two (2) mares negative for EAV antibodies or have its semen collected and cultured for EAV. If the culture report and blood samples are negative for EAV, there shall not be restrictions placed on a future breeding season. ~~(1) Previously classified shedding stallions which have become nonshedders.~~

(a) The first breeding season following the stallion's classification as a nonshedder, the first five (5) sero negative mares covered by the stallion shall have a blood sample collected for an EVA test twenty-eight (28) days post breeding.

(b) For the stallion's second breeding season, semen may be collected and cultured for EAV or the stallion may be bred to two (2) mares negative for EAV antibodies. If the culture report is negative for EAV and if blood test report is negative for EAV antibodies, additional restrictions for future breeding seasons may not be required.

(2) A sero positive vaccinated (arvac) stallion ~~[stallions]~~ that did not have an EVA negative test prior to vaccination shall be eligible for breeding by complying with one (1) of the following:

(a) Semen shall be collected and cultured for EAV and culture shall be reported as negative; or

(b) Prior to entering the breeding shed, the stallion shall be bred to two (2) mares negative for EAV antibodies. The two (2) mares shall have blood collected for an EVA test twenty-eight (28) days after ~~[post]~~ breeding. Test results shall be reported as negative for EAV antibodies.

(3) A nonvaccinated sero positive stallion shall include a vaccinated stallion that does not have documentation of the vaccination or a stallion with unknown exposure to EAV. A nonvaccinated sero positive stallion shall be eligible for breeding by complying with the following: ~~[Nonvaccinated sero positive stallion. (stallions reported as vaccinated (arvac) but vaccination can not be documented by a vaccination certificate and stallions with unknown exposure to EAV).]~~

(a) Semen shall be collected and cultured for EAV; or

(b) Prior to entry into the breeding shed, the stallion shall be bred to two (2) mares negative for EVA antibodies. The two (2) mares shall have blood collected for an EVA test twenty-eight (28) days after ~~[post]~~ breeding. Test results shall be reported as negative for EVA antibodies.

(c) ~~[1.]~~ The first two (2) sero negative mares covered by the stallion shall have a blood sample collected for an EVA test twenty-eight (28) days after ~~[post]~~ breeding.

(d) ~~[2.]~~ The Kentucky State Veterinarian may monitor a ~~[any]~~ sero negative mare covered by the stallion during a breeding season by having a blood sample collected for an EVA test twenty-eight (28) days after ~~[post]~~ breeding.

(4) The determination ~~[To determine]~~ that a stallion is not a shedder shall be made based on a scientific procedure ~~[accomplished by using scientific procedures]~~ approved by the state veterinarian. The procedures shall be conducted in the presence of the chief livestock health officer or his designee.

Section 4. EVA Classification Category. ~~[(d) All mares bred to shedding stallions shall be classified as either Category One Mares or Category Two Mares for the breeding season and the following shall apply to each category of mares:]~~

(1) ~~[1.]~~ Category One Mares. Category One Mares shall include mares bred to a shedding stallion for the first time.

(a) ~~[a.]~~ Category One Mares shall be vaccinated a minimum of twenty-one (21) days prior to the first cover by a ~~[the]~~ shedding stallion and shall be isolated a minimum of twenty-one (21) days after the first cover.

1. During isolation, the Category One Mare shall be physically separated from other equine in a separate isolation area approved by the chief livestock health official or designated personnel.

2. After the isolation period, a Category One Mare may move without restriction.

~~[1. ~~[(i)]~~ For purposes of clause a of this subparagraph isolation shall mean physical separation from other equine in a separate isolation area approved by the chief livestock health official or designated personnel.~~

~~2. ~~[(ii)]~~ Following the completion of the isolation period the Category One Mares may move without ~~[further]~~ restriction.]~~

(b) A ~~[b.]~~ Category One Mare that does ~~[Mares that do]~~ not conceive after being bred to a shedding stallion ~~[stallions]~~ and ~~[who]~~ has ~~[have]~~ completed the twenty-one (21) day isolation period following the first cover shall be reclassified as a Category Two Mare ~~[Mares]~~ for the remainder of the breeding season.

(2) ~~[2.]~~ Category Two Mares. Category Two Mares:

(a) Shall include a mare:

1. ~~[mares]~~ Bred to a shedding stallion ~~[stallions]~~ within the previous two (2) years; or

2. ~~[Mares]~~ Previously classified as a Category One Mare that has ~~[Mares that ~~[who]~~ have]~~ completed the twenty-one (21) day isolation period; and

(b) ~~[set out in subsection (1)(a) of this section may be classified as ~~[clause a of this subparagraph:]~~ Category Two Mares and]~~ May move without restrictions after ~~[following]~~ being covered by a shedding stallion ~~[stallions]~~.

(3) A mare ~~[(e)]~~ ~~[Mares]~~ bred to a shedding stallion ~~[stallions]~~ shall return ~~[be returned]~~ to the farm of origin in a van or other transport vehicle by herself with sero positive equine ~~[by being the only horse on the van or may be transported with equine known to be sero positive for EVA].~~ ~~[in a separate van or other mode of transportation.]~~ Upon returning to the farm of origin, the van or other transport vehicle ~~[vehicles]~~ and equipment ~~[mode of transportation]~~ used to move the mare ~~[transport said mare]~~ shall be immediately cleaned and disinfected.

(4) A mare ~~[(f)]~~ ~~[Mares]~~ bred to a shedding stallion shall be bred ~~[only]~~ to a shedding stallion ~~[stallions]~~ during that estrus cycle. A mare ~~[These mares]~~ may be bred to a nonshedding EVA vaccinated stallion on subsequent estrus cycles during the breeding season. ~~[stallions vaccinated for the current breeding season in subsequent estrus cycles.]~~

(5)(a) Except as provided in paragraph (b) of this subsection, in cooperation with the stallion's owner or manager, the chief livestock health official shall determine that a stallion is not shedding EAV prior to the stallion being permitted to breed.

(b) A stallion shall be permitted to breed with an EVA sero negative test mare without the determination required by paragraph (a) of this subsection. ~~[(2)]~~ It shall be the responsibility of the chief livestock health official in cooperation with the stallion owner/manager to determine that a stallion is not shedding EAV prior to the stallion being permitted to breed. Except when breeding the stallion to designated EVA sero negative ~~[other than to]~~ test mares.]

~~[(a) Sero positive nonshedding stallions shall be required to be monitored as follows:~~

1. All of the sero negative mares bred to these stallions shall be sero monitored at twenty-eight (28) days following breeding for the first breeding season following the classification of the stallion as a sero positive, nonshedding stallion.

2. The first two (2) sero negative mares shall be sero monitored at twenty-eight (28) days following breeding to sero positive nonshedders during the stallion's second season following classification as a sero positive, nonshedding stallion.

3. No mares are required to be sero monitored following the second season after classification as a sero positive nonshedding stallion.

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(b) The procedure for determining that a stallion is not a shedder shall be accomplished in the presence of the chief livestock health official or his designee using a scientifically acceptable procedure prescribed by the state veterinarian and approved for use by the Kentucky State Board of Agriculture.

(c) Owners or agents of mares booked or seeking to book to sero positive stallions classified under this subsection shall be notified in writing by the owner or agent of the stallion as to the classification of the stallion at the time of booking and a copy of the written notification sent to the chief livestock health official;

(3) Sero positive, vaccinated stallions shall have been sero negative prior to vaccination and a statement presented by the owner or agent of the stallion and his veterinarian that the stallion had no known contact with EVA infected or exposed equine prior to vaccination nor during the twenty-one (21) days post vaccination.

Section 5. ~~(3)~~ **A stallion or mare** [Stallions or mares] [becoming] infected with EVA during the breeding season shall immediately cease breeding and the chief livestock health official shall be immediately notified. ~~[All]~~ **An owner or agent with a mare booked or bred to a stallion** [Owners or agents with [having] mares booked or have bred mares [previously bred] to stallions] that became [becoming] infected with EVA during the breeding season shall be immediately notified in writing by the stallion's owner or agent. [of the stallion and] A copy of the written notification shall be sent to the chief livestock health official. **A** [Any] stallion [becoming] infected with EVA during the breeding season shall be classified as a shedder and shall be handled accordingly. Following the stallion's classification as a shedder, the chief livestock health official may reclassify the stallion as a nonshedder in accordance with Section 3(4) [under Section 4] of this administrative regulation. [may be subsequently determined by the chief livestock health official to be a nonshedder in accordance with Section 2(2)(b) of this administrative regulation.]

Section 6. ~~(4)~~ Equine Vaccinated Against EVA. Equine vaccinated for the first time against EVA shall [must] have a blood sample collected [drawn] for an EVA test prior to vaccination. A certificate documenting the equine has been vaccinated shall [testing and a negative EVA test result prior to vaccination. Vaccinations must] be sent [reported] to the chief livestock health official within seven (7) days of the vaccination date. **A vaccinated stallion** [stallions] [vaccinated] shall not be exposed to **an EVA affected** [infected] **animal** [animals] and shall not be used for breeding within [for at least] twenty-eight (28) days after [post] vaccination. [following vaccination. All equine vaccinated against EVA shall be properly identified.] **A thoroughbred stallion** [All thoroughbred stallions] used for breeding in Kentucky shall [must] be [properly] vaccinated annually with an approved state federal EVA vaccine. [against EVA.]

Section 7. **A nurse mare shall be:**

(1) Sero negative;

(2) Officially vaccinated in accordance with Section 6 of this administrative regulation; or

(3) Isolated from other equine on the farm. [In addition to requirements established by this administrative regulation for the control of EVA, ~~(5)~~ the chief livestock health official may establish additional guidelines to prevent the spread of EVA throughout the Commonwealth's equine population if an EVA outbreak should occur. [take such steps in addition to those outlined in this administrative regulation as are reasonably necessary for the prevention and control of EVA in the equine population which shall include but not be limited to the isolation of all thoroughbreds and equine associated with them, thought to present the potential for EVA spread in the Commonwealth of Kentucky.]

~~Section 8. (6) Nurse mares shall be sero negative or officially [properly] vaccinated in accordance with Section 6 (4) of this adminis-~~

~~trative regulation or shall be isolated from other equine on the [thoroughbred] farm.]~~

Section 8. **A teaser** ~~(9)~~ ~~(7)~~ All teasers shall be officially [properly] vaccinated against EVA.

Section 9. (1) An EVA test mare shall be isolated from the other equine and under the supervision of state personnel if the mare becomes:

(a) Affected with EAV after breeding; or

(b) Sero positive after breeding.

(2) An isolated mare shall be eligible for release from isolation by the chief livestock health official after:

(a) Twenty-eight (28) days in isolation; or

(b) The spread of EAV is no longer a risk, whichever is longer.

~~[Section 10. (8.) If an EVA [any] test mare should become affected with EAV post breeding or if the test mare should become sero positive post breeding, the mare shall be isolated from all other equine. Such equine shall remain in isolation under the supervision of state personnel. The mare may be eligible for release by the chief livestock health official twenty-eight (28) days post isolation or until the spread of EAV is no longer a risk.] [after test breeding shows symptoms of the disease or if any mare sero converts the positive mare shall be isolated under state supervision from all other equines until released by the chief livestock health official which will be no sooner than twenty-eight (28) days after the onset of clinical signs.]~~

BILLY RAY SMITH, Commissioner, Chairman

APPROVED BY AGENCY: April 10, 1997

FILED WITH LRC: April 14, 1997 at noon

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Water (As Amended)

401 KAR 8:030. Water treatment plants; water distribution systems; certification of operators.

RELATES TO: KRS Chapters 223, 224

STATUTORY AUTHORITY: KRS 223.160 to 223.220, 224.10-100, 224.10-110, 42-USCA 300f, 300g, 300j, 40-CFR 141.2, as amended at 54-Federal Register 27526 and 27562 (1989)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 223.160-223.220 establishes a board of certification and authorizes the cabinet to establish a program requiring certification of water system operators. KRS 224.10-110 directs the cabinet to enforce administrative regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use and for the certification of water plant operators. [The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising the primary enforcement responsibility.] This administrative regulation establishes standards for classification of water treatment plants and water distribution systems; qualifications of applicants; examination procedures; duties of the Kentucky Board of Certification of Water Treatment Plant and Water Distribution System Operators; and provisions relating to the issuance and renewal of certificates; disciplinary actions; and other provisions necessary for the certification of operators. The Safe Drinking Water

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Act Amendments of 1996, enacted August 6, 1996 (PL 104-182), include a provision for the certification of operators of public water systems. The regulations to implement the federal law are required no later than thirty (30) months after enactment of the federal law. Therefore, there are no federal regulations and this administrative regulation is not more stringent than the federal law or regulation.

Section 1. General Provisions. (1)(a) Each public water system shall ensure that each component of the system is operated according to the provisions of KRS Chapters 223 and 224 and the administrative regulations of this chapter.

(b) ~~[Direct responsible charge.]~~ Each public water system shall operate its water treatment plant and water distribution system ~~[be operated]~~ under the supervision of a certified operator who is in direct ~~[direct]~~ responsible charge of the system. Certified operators are not required for semipublic water systems.

(c) All ~~[The]~~ certified operators in direct ~~[direct]~~ responsible charge shall hold a valid certificate in a class equal to or higher than that required for the system under his supervision. A ~~[The]~~ certified operator ~~[in direct responsible charge]~~ may be an individual who has been assigned ~~[sole]~~ responsibility for the operational procedures performed at the plant ~~[operation of the system]~~, or may be a person who is supervising ~~[has been delegated the direct responsibility to supervise]~~ others in the performance of operational procedures at the plant. ~~[their duties in operating the system. The certified operator in direct responsible charge shall be physically on the premises of the water treatment facility or otherwise performing system-related duties within the system during the shifts for which the operator is responsible, except as provided in subsection (2) of this section. System related duties include but are not limited to attending local government meetings, having parts repaired, purchasing supplies and maintenance of distribution system appurtenances.]~~

(2) Staffing requirements.

(a) Shifts.

(a) Water treatment systems. Public water systems shall employ a certified operator in direct responsible charge as specified in subparagraphs 1 through 4 of this paragraph;

1. Class I. Operational procedures performed at Class IA-D or IB-D water treatment systems shall be conducted under the supervision of, or by, a certified operator.

2. Class II.

a. Operational procedures performed at Class IIA water treatment systems serving a population less than 500 shall be conducted under the supervision of, or by, a Class IIA, IIIA or IVA certified water treatment plant operator. Class IIA water treatment systems serving a population equal to or greater than 500 and less than 3,000 shall be staffed with a Class IIA, IIIA or IVA certified water treatment plant operator in direct responsible charge during the daytime shift. Operational procedures conducted during other shifts shall be conducted under the supervision of, or by, a Class IIA, IIIA or IVA certified water treatment plant operator.

b. Operational procedures performed at Class IIB-D water treatment systems shall be conducted under the supervision of, or by, a Class IIA, IIB-D, IIIA, IIIB or IVA certified operator.

c. Operational procedures performed at Class IIC-D water treatment systems shall be conducted under the supervision of, or by, a Class IIA, IIB-D, IIC-D, III or IV certified operator.

3. Class III.

a. Class IIIA water treatment systems shall be staffed with a Class IIIA or IVA certified water treatment plant operator in direct responsible charge of shifts where water is treated.

b. Class IIIB and IIIC water treatment systems shall be staffed by a Class III or IVA certified water treatment plant operator in direct responsible charge during the daytime shift. Operational procedures conducted during other shifts shall be conducted under the supervision of, or by, a Class III or IVA certified water treatment plant operator.

4. Class IV. Class IVA water treatment systems shall be staffed with a Class IVA certified water treatment plant operator in direct responsible charge for shifts where water is treated.

(b) Water distribution systems. Operational procedures performed within water distribution systems shall be conducted by or under the supervision of, or by, a distribution system operator certified in a class equal to or higher than the class of the system. ~~[Furthermore, water distribution systems having booster chlorination or other treatment capabilities shall be staffed with a certified distribution operator in direct responsible charge in a class equal to or higher than the class of the distribution system during the daytime weekday shift.]~~

(b) Combination water treatment plants and water distribution systems. Operational procedures at all Class IA-D, IB-D, and IIB-D water systems shall be conducted by or under the supervision of a certified water system operator who holds a valid combination or separate water treatment and distribution system operator certificate of the appropriate class and who is in direct responsible charge of the system.

(c) Water treatment plants.

1. Class IIA. Operational procedures at a Class IIA water treatment plant shall be conducted by a certified water treatment plant operator who holds a valid certificate in a class equal to or higher than Class IIA who is in direct responsible charge of the plant and is physically located on the premises of the water treatment plant during the daytime shift or is otherwise performing system-related duties. Operational procedures conducted during other shifts shall be conducted by or under the supervision of a Class IIA, IIIA, or IVA certified water treatment plant operator.

2. Class IIIA. Operational procedures at a Class IIIA water treatment plant shall be conducted by a certified water treatment plant operator who holds a valid certificate in a class equal to or higher than Class IIIA who is in direct responsible charge of the plant and is physically located on the premises of the water treatment plant when water is being treated or is otherwise performing system-related duties.

3. Class IIIB. Operational procedures at a Class IIIB water treatment plant shall be conducted by or under the supervision of a certified water treatment plant operator who holds a valid certificate in a class equal to or higher than Class IIIB who is in direct responsible charge of the system.

4. Class IVA. Operational procedures at a Class IVA water treatment plant shall be conducted by a certified water treatment plant operator who holds a valid Class IVA certificate who is in direct responsible charge of the plant and is physically located on the premises of the water treatment plant when water is being treated or is otherwise performing system-related duties.

5. Class IVB. Operational procedures at a Class IVB water treatment plant shall be conducted by or under the supervision of a certified water treatment plant operator who holds a valid certificate in a class equal to or higher than Class IVB who is in direct responsible charge of the system.

(3) Certifiable personnel. Persons who are under the supervision of the operator in direct ~~[direct]~~ responsible charge are encouraged to and may become certified by the cabinet if they meet the ~~[appropriate education and experience]~~ requirements of Section 8 of this administrative regulation and pass the appropriate examination of the requested class. This provision shall apply only to personnel who have hands-on drinking water treatment or distribution system experience.

(4) Production personnel. On-site laboratory or distribution personnel and others who have significant routine input into the treatment ~~[production]~~ or distribution of potable water may be certified if they demonstrate to the satisfaction of the cabinet that they meet the education and experience requirements and possess the technical and practical knowledge to perform the procedures involved in the operation of a water treatment plant or water distribution system.

(5) A public water system may fulfill the staffing requirements of this section by securing a contract operator or an operations firm. If a public water system secures a contract operator or operations firm to operate a treatment plant or distribution system, the public water system shall provide the following information to the cabinet:

(a) Name, mailing address, and telephone number of:
1. The certified operator or contract operations firm; and
2. Principal contact within the firm for certification activities, if different;

(b) Name and certificate type and number for each certified operator;

(c) Facility name, public water supply identification number, and county location of each system for which the operator is assuming responsibility;

(d) Effective date and expiration date of the contract; and

(e) Duties and responsibilities to be performed by each party involved. ~~[Semipublic system. Certified operators are not required for semipublic water systems.]~~

(6) Certificate display. If a public water system office is available at the water treatment plant or within the distribution system, each ~~[the]~~ operator's certificate[s] shall be prominently displayed ~~[on the wall]~~.

(7) Wallet card. Certified operators shall carry the ~~[cabinet-issued]~~ wallet card issued by the cabinet in accordance with Section 4(1) of this administrative regulation showing current certification status while on duty.

(8) Provisional compliance. Public water systems that are in compliance with all other provisions of 401 KAR Chapter 8 except for the requirements of subsections (1) and (2) of this section shall be in provisional compliance if:

(a) The system comes into compliance with the requirements of subsections (1) and (2) of this section within ninety (90) days of the loss of the certified operator; or

(b) 1. A Class II, III, or IV public water system submits a written request to the cabinet for its approval of ~~[for]~~ a provisional staffing plan. During provisional compliance, public water systems may use as provisional operators those certified operators who possess a certificate of one (1) class lower than that required by the facility, if a certified operator of the appropriate class as required by subsections (1) and (2) of this section is immediately available. No more than two-thirds (2/3) of the number of operators required each day for the facility to maintain coverage of the hours when water is treated may be provisional operators.

2. The provisional staffing plan shall contain ~~[which contains]~~ the following information:

a. The number of hours water is treated each day of the week or shift rotation, averaged over seven (7) days;

b. If water is treated continuously or intermittently during that time period;

c. The average number of hours each certified or uncertified operator works each day within a week or shift rotation; and

d. How the system will meet the requirements of subsections (1) and (2) of this section within a reasonable time frame, not to exceed two (2) years; ~~[required in subsection (9) of this section];~~

3. ~~[2.]~~ The cabinet approves the provisional staffing plan; and

4. ~~[3.]~~ The system is meeting the approved provisional staffing plan; ~~[including all conditions assigned by the cabinet].~~

~~[(e) During provisional compliance, public water systems may use certified operators who possess a certificate of one (1) class lower than that required by the facility as provisional operators, if a certified operator of the appropriate class as required by subsections (1) and (2) of this section is immediately available. No more than two thirds (2/3) of the number of operators required for the facility to maintain coverage of the hours when water is treated may be provisional operators.]~~

(9) Provisional staffing plan.

(a) ~~[The provisional staffing plan shall demonstrate how the~~

~~system will meet the requirements of subsections (1) and (2) of this section within a reasonable time frame, not to exceed two (2) years.~~

~~(b) The cabinet shall [will] approve the provisional staffing plan if:~~

1. The plan meets the criteria specified in subsection (8) of this section ~~[and paragraph (a) of this subsection];~~

2. ~~[The system is otherwise in compliance with 401 KAR Chapter 8 and maintains compliance during the provisional compliance period;~~

~~3.]~~ Public health and safety will be protected throughout the period identified in the provisional staffing plan; and

3. ~~[4-]~~ The system has not in the two (2) years before submitting the provisional staffing plan been issued more than three (3) notices of violation for one (1) of the following categories:

a. Violating a maximum contaminant level established by 401 KAR Chapter 8, and failing to monitor or to report as required by 401 KAR Chapter 8;

b. Violating a turbidity requirement of 401 KAR Chapter 8; or

c. Violating a chemical or radionuclide requirement of 401 KAR Chapter 8. ~~[does not have a history of noncompliance in the last two (2) years.]~~

~~(b) [(e)]~~ The provisional staffing plan shall be considered to be approved unless the cabinet otherwise notifies the system within ninety (90) days of the receipt of the provisional staffing plan.

~~(c) The cabinet may revoke its approval of a provisional staffing plan if the system violates a requirement of 401 KAR Chapter 8.~~

~~(d) [(e)]~~ The cabinet shall ~~[may]~~ approve a second provisional staffing plan for a system if the public water system is in compliance with this subsection and subsection (8) of this section, the system has made reasonable efforts ~~[taking into consideration previous efforts made]~~ to obtain the requisite number of properly certified operators as required by subsections (1) and (2) of this section, and unusual or unforeseen events prevented the system from meeting the requirements of subsections (1) and (2) of this section within two (2) years after the cabinet's approval of the first provisional staffing plan.

(10) Reporting requirements.

(a) Each public water system shall notify the cabinet in writing within thirty (30) calendar days of certified operator employment changes.

(b) Certified operators shall notify the cabinet within thirty (30) calendar days of employment or mailing address changes. Employment change information shall include the name and identification number of the public water system, the effective date of the change, and whether the operator is assuming or relinquishing responsibility for the plant or system. ~~[Staffing compliance schedule. Class III and IV public water systems subject to the on-site staffing requirements of subsection (2) of this section shall comply with the staffing requirements by January 1, 1993.]~~

Section 2. Duties of the Board. In carrying out its responsibilities and with consideration given to the minimum standards and guidelines of the ABC, the board may:

(1) Examine the qualifications of applicants and recommend qualified applicants to the cabinet for certification;

(2) Review and approve substitutions for education and experience requirements;

(3) Review and assist the cabinet in the preparation of examinations;

(4) Review and provide comments to the cabinet on proposed drinking water operator certification administrative regulations;

(5) Review and provide comments to the cabinet on proposed training courses and seminars designed to provide continuing education to certified operators;

(6) Review evidence and advise the cabinet regarding disciplinary actions for certified operators who fail to comply with the applicable laws and administrative regulations of the Commonwealth;

- (7) Review the certification administrative regulations of states which are seeking reciprocity with the Commonwealth; and
 (8) Review and provide comments to the cabinet on proposed fees for training and certification of operators.

Section 3. Application and Examinations for Certification. (1) Application. An individual desiring to be certified shall file an application with the cabinet and pay the applicable fee specified in 401 KAR 8:050, Section 3. Application shall be made on the form entitled "Drinking Water or Wastewater Operator Certification Application" [a-form] provided by the cabinet and incorporated by reference in Section 9 of this administrative regulation. Application[s] shall not be filed with the cabinet until the individual has met the minimum qualifications required in this administrative regulation.

(2) Examinations. The board and cabinet shall be jointly responsible for preparation of the examinations which shall be used in determining knowledge, ability and judgment of the applicants. The cabinet shall administer written exams unless the cabinet and board grant a waiver to allow an oral exam. Oral exams may be administered to applicants who meet the minimum qualifications outlined in Section 8 of this administrative regulation. The cabinet shall grade the examinations and notify the applicant of the outcome. Applicants shall achieve a score of at least seventy (70) percent to pass the examination. Examinations shall not be returned to the applicant, but results may be reviewed with a member of the board or cabinet upon written request by the applicant.

(3) Scheduling examinations. Examinations shall be conducted at least semiannually at places and times set by the cabinet. The cabinet shall provide advance announcement of these examinations.

(4) Examination content. The cabinet shall [will] prepare examinations to address the basic differences in the duties and responsibilities of certified operators, treatment processes, [types of facilities,] drinking water standards, surface and groundwater source characteristics and other pertinent matters.

(5) Applicant's conduct. Applicants found cheating shall be subject to disciplinary action including [but not limited to,] a final score of zero on the examination, denial of future applications for certification, or the provisions of Section 5 of this administrative regulation.

(6) Confidentiality of examinations. Examination questions shall be [are] confidential. Any person who copies questions, removes all or part of any examination, or reveals all or part of any examination for unauthorized use shall [may] be denied certification, be subjected to the sanctions identified in Section 5 of this administrative regulation, or be liable for civil and criminal penalties pursuant to KRS 223.991 or 224.99-010.

(7) Qualified applicants, other than those specified in subsection (5) or (6) of this section, who fail to pass an examination may register to take the examination on [at] a regularly scheduled examination date.

Section 4. Issuance of Certificates. (1) Certification. Upon satisfactory fulfillment of the requirements of this administrative regulation and upon recommendation of the board, the cabinet shall issue a certificate and a wallet card to the applicant designating the classification of the water treatment plant or water distribution system for which the operator has demonstrated competency. [If information related to the operator's employment or mailing address changes from the application filed for certification, the certified operator shall provide written notification to the division within thirty (30) days. If a certified operator becomes permanently incapacitated while employed by a water treatment plant or distribution system, the employer shall notify the division.]

(2) Duration and renewal of certificates.

(a) Certificates for all certified operator classes, except the limited classification as identified in Section 6(5) [(4)] of this administrative regulation, shall be issued with a common expiration date of June 30

of even-numbered years, and shall remain valid until that date [valid for up to two (2) years after each renewal], unless suspended or revoked for cause. Certificates issued between January 1 and June 30 of an even-numbered year will be issued to include the next two (2) year renewal period. [or replaced by one of a higher and similar classification.]

(b) Certificates shall expire on June 30 of even-numbered years if not renewed. Operators with expired certificates shall not be in direct responsible charge of a public water system.

(c) Renewals. Certificates shall [may] be renewed without examination, if the certified operator has not been issued a notice of violating 401 KAR Chapter 8 [is in good standing]; upon completion of the required, board-approved continuing education hours outlined in subsection (7) of this section and upon submittal of a complete renewal application and applicable fees specified in 401 KAR 8:050, Section 3. Operators desiring renewal shall apply on the form entitled "Application for Certificate Renewal" [a-form] provided by the cabinet and incorporated by reference in Section 9 of this administrative regulation by June 30 of even-numbered years. Expired certificates shall continue in force pending administrative processing of a renewal, if the certified operator has a valid certificate [is in good standing] and has complied with all the renewal requirements of this subsection and subsection (7) of this section by June 30 of the renewal year. Certificates continued under this paragraph remain fully effective and enforceable.

(d) ~~[(b)]~~ Limited certificates shall expire on June 30 of each year. The cabinet shall [may] renew the limited certificate upon receipt of the renewal application if the certified operator has complied with all requirements for proper operation of the facility under his direct responsible charge and has submitted a written application and applicable fees specified in 401 KAR 8:050, Section 3.

(3) Certification for a higher classification. Certified operators who desire to become certified in a higher classification shall satisfactorily complete the requirements of Sections 3 and 8 of this administrative regulation [before submitting a new application. Experience earned under a limited certificate shall not count toward fulfillment of qualifications for other classifications].

(4) Certificates shall be valid only while the holder uses reasonable care, judgment, and application of his knowledge in the performance of his duties. Certificates shall not be issued or valid if obtained through fraud, deceit or the submission of inaccurate data on qualifications.

(5) Termination of a certificate.

(a) If a certified operator fails to renew his certificate, the certificate shall terminate one (1) year after its expiration date [after two (2) consecutive renewal periods]. Limited certificates shall terminate on December 31 of the renewal year [immediately after the expiration date] if they are not renewed. Once a certificate has terminated, an operator shall apply, pay applicable fees and pass an examination in the classification for which he is qualified to be certified.

(b) Operators holding a certificate with an expiration date of June 30, 1994, on October 7, 1996 [the effective date of this emergency administrative regulation] may renew the certificate by fulfilling the renewal requirements specified in subsections (2)(c) and (7) of this section for each renewal period by June 30, 1997.

(6) Reciprocity. Certificates may be issued in a comparable classification, without examination, to a person who holds a valid certificate in a state, territory, or possession of the United States, or a country, if:

(a) The applicant filed a complete application as required in Section 3(1) of this administrative regulation;

(b) The certificate was earned by passing an examination in the reciprocal state;

(c) The requirements for certification [of operators] under which the [person's] certificate was issued are no less stringent than the provisions of KRS Chapters 223 and [KRS Chapter] 224 and this

administrative regulation; and

(d) Reciprocal privileges are granted to certified operators of the commonwealth.

(7) Training requirements.

(a) Certified operators shall accumulate continuing education credits approved by the cabinet or board, prior to applying for certificate renewal.

~~[1. This subparagraph shall apply to operators whose certification expires on or before June 30, 1992. Class I operators shall complete six (6) hours of training for renewal. Class II, III, and IV operators shall complete twelve (12) hours of appropriate cabinet-approved training for certificate renewal. Such training may include, but is not limited to, correspondence courses, short courses, trade association meetings, and on-the-job training courses. Training hours accumulated in excess of the minimum number required for renewal may be carried forward for two (2) years. No training is required for operators with limited certificates.~~

~~2. This subparagraph shall apply to operators whose certification expires after June 30, 1992. Class I and II certified operators shall complete twelve (12) hours of training for certificate renewal. Class III and IV certified operators shall complete twenty-four (24) hours of training for certificate renewal. The requisite training shall be completed for each renewal during the two (2) year period immediately prior to the certificate expiration date. Training includes, but is not limited to, correspondence courses, short courses, trade association meetings, and on-the-job training courses. Training hours accumulated in excess of the minimum number required for renewal may be carried forward for two (2) years from the date earned. No training is suggested but not required for operators with limited certificates.~~

~~(b) [The board may waive any of the requirements of paragraph (a) of this subsection for all or portions of a class of operators, as identified in Section 7 of this administrative regulation.~~

~~(c) 1. This subparagraph shall apply to operators whose certification expires on or before June 30, 1992. Operators holding both treatment and distribution certificates shall be required to complete eighteen (18) hours of training for recertification in lieu of the requirements of subsection (7)(a)1 of this section.~~

~~2. This subparagraph shall apply to operators whose certification expires after June 30, 1992. Certified operators holding [with] separate [Class I and II] treatment and distribution certificates shall complete the [twelve (12) hours of] training hours for recertification required for only the highest certificate in lieu of the continuing education requirements specified for both certificates in paragraph (a) [of subsection (7)(a)2] of this subsection. [Certified operators holding separate Class III or IV treatment and distribution certificates shall complete twenty-four (24) hours of training for recertification in lieu of the continuing education requirements of subsection (7)(a)2 of this section.]~~

~~(c) [Certified operators shall keep their own records of approved training, education, and work experience and shall be prepared to present the records if requested by the cabinet.~~

~~(d) Certified operators who teach board-approved training courses shall [may] receive, upon approval of the board, hour-for-hour credit for actual instruction time.~~

~~(d) [(e)] The criteria for determining whether to approve training, other than the training provided by the cabinet, are:~~

~~1. The ability of the course to provide information that will enhance the proper operation and maintenance of water treatment and distribution systems; and~~

~~2. The ability of the instructor to properly present the information.~~

~~3. In making its determination regarding approval of training courses, the cabinet and board shall require that the following information be submitted for review: the course name; the date, location and a timed agenda for the course; the credit hours being requested; a summary of the course content of sufficient detail to determine relevance and quality of the course; and the name and credentials of each instructor for the course.~~

4. The board or cabinet may attend and evaluate, or cause to be evaluated, all board-approved courses.

(e) [(f)] All course administrators who provide board-approved training shall maintain records on each board-approved course conducted and shall submit the information in the records to the cabinet within thirty (30) days of the conclusion of the course. The information shall include, but not be limited to:

1. The course name;

2. The course number assigned by the cabinet;

3. The class date and location;

4. The name, certificate type and number, and hours attended by each operator; and

5. The course administrator's signature.

Section 5. Disciplinary Action. (1) A certified operator shall be subject to a disciplinary action identified in this section if the cabinet, in consultation with the board according to this section, determines that the individual [certified operator] has:

(a) Willfully or negligently violated or caused a violation of this administrative regulation;

(b) Submitted false or misleading information on any document provided to the cabinet, including applications for certification or renewal;

(c) Cheated on an examination, or violated confidentiality of examination questions;

(d) Used fraud or deception in the course of employment as an operator;

(e) Failed to use reasonable care or judgment in the course of employment as an operator, failed to apply knowledge or ability in the performance of duties, was incompetent in the performance of duties, or was unable to properly perform duties;

(f) Willfully or negligently caused or violated the requirements of KRS Chapters 223 or 224 or 401 KAR Chapter 8; or

(g) Willfully or negligently falsified or failed to maintain or submit, records required by 401 KAR Chapter 8, [practiced fraud or deception in obtaining certification or filing cabinet-mandated reports; has not used reasonable care or judgment in the performance of duties; has failed to apply knowledge in the performance of duties; or is incompetent, unable or unwilling to properly perform duties.]

(2) [(4)] Sanctions. The disciplinary action shall be determined by the cabinet in accordance with the review procedures in subsection (3) [(2)] of this section, and may take the form of the following sanctions according to subsection (4) [(3)] of this section, depending on the severity, duration, and number of the violations. The sanctions may include, but are not limited to:

(a) Probation for a specified period of time, not to exceed one (1) year;

(b) Suspension of the operator's certificate for a specified period of time, not to exceed one (1) year, during which the certificate shall be considered void;

(c) Temporary or permanent revocation of the operator's certification (temporary revocations shall not be less than one (1) year or more than four (4) years in duration); and [or]

(d) Civil or criminal penalties against the operator.

(3) [(2)] Initial review procedures. Written complaints received by the board or cabinet on a certified operator, unless duplicitous or frivolous, shall be reviewed at the next regularly scheduled board meeting. If the charges warrant further investigation, the certified operator may be advised to appear before the board to discuss the charges levied. Upon completion of the review, the board shall make a recommendation to the cabinet regarding the operator's certification status. The board may recommend that no action be taken or that the cabinet impose a sanction identified in subsection (2) [(4)] of this section, or any other action.

(4) [(3)] Cabinet action. The cabinet shall review the evidence presented and the board's recommendations. Upon completion of the review, the cabinet shall [will] initiate the recommended action or

notify the board as to why an alternative action was taken. The certified operator and his employer shall be advised by certified mail of the action, the reasons outlined for the action, and the length of time for which the sanction shall apply. A certified operator whose certificate has been suspended or revoked shall not perform direct responsible charge operator duties during the period that the disciplinary action remains in effect. If a certification is permanently revoked, the operator shall be ineligible for future certification as a water treatment plant or distribution system operator. Experience gained during a suspension or temporary or permanent revocation shall not be included toward meeting the requirements of Section 8 of this administrative regulation. An action taken by the cabinet pursuant to this administrative regulation shall not preclude the cabinet from pursuing additional civil or criminal action.

(5) ~~[(4)]~~ Sanction review and removal. During the operator's probation, suspension, or temporary revocation, the board and cabinet shall ~~[will]~~ monitor the operator's work activities. At the end of the sanction period, the board will recommend to the cabinet whether the sanction should be lifted or whether additional action is necessary against the certified operator.

(6) ~~[(5)]~~ Appeal procedures. An operator who considers himself aggrieved by the disciplinary action may file a petition for hearing with the cabinet pursuant to KRS 224.10-420(2).

Section 6. Classification of Water Treatment Plants and Water Distribution Systems. The classification system shall be ~~[(a)]~~ structured with four (4) classes of water treatment plants, Class I, II, III, or IV, which includes two (2) subclasses of treatment types, A or B, and four (4) classes of water distribution systems, Class I, II, III, or IV. Class IV is the highest class and subclass A is the highest subclass. Combined treatment and distribution classifications also exist for Class I and II systems: Class IA-D, IB-D, and IIB-D. The class structure relates to and corresponds with the operator classifications outlined in Section 7 of this administrative regulation. Operators with separate treatment and distribution certifications may supervise a facility with a combined classification if the certifications are equal to or higher than the system classification.

(1) Public water system classifications ~~[- Classification]~~ shall be established in accordance with the classes listed in subsections (2) and (3) ~~[subsection (2)]~~ of this section.

(a) However, the cabinet may make changes in system classifications in accordance with needs created by particular complexities of a public water system by reason of special features of design, or by reason of a source of supply that has characteristics that may make operation more difficult than normal, or a combination of these conditions. Due notice of a change shall be given to the owner of the public water system.

(b) The cabinet shall reclassify a nontransient noncommunity water system that treats water primarily for its industrial process with limited employee use if the calculated portion not used for the industrial process averages less than ten (10) percent of the average daily production averaged over the most recent twelve (12) months.

(2) Water treatment plants or systems shall be classified as one (1) of four (4) classes, based on the cabinet-assigned design capacity for finished water production that the treatment plant is able to produce in twenty-four (24) continuous hours of production, taking all limiting factors into consideration, and the treatment process employed. Public water systems with more than one (1) treatment plant shall have each treatment plant classified in accordance with this section, and each plant shall be operated in accordance with Section 1 of this administrative regulation.

(a) The treatment plant classifications and designated capacities shall be:

1. Class I: all treatment plants which have an assigned design capacity of less than 50,000 gallons of water per day;

2. Class II: all treatment plants which have an assigned design

capacity of 50,000 or more gallons of water per day but less than 500,000 gallons per day;

3. Class III: all treatment plants which have an assigned design capacity of 500,000 or more gallons of water per day but less than 3,000,000 gallons per day; and

4. Class IV: all treatment plants which have an assigned design capacity of 3,000,000 or more gallons of water per day.

(b) Each class shall be subdivided according to the type of treatment used by the plant. The subclasses shall be:

1. A: water treatment plants which use gravity filtration, except slow sand filtration as described in 401 KAR 8:150, as a part of their treatment scheme; and

2. B: water treatment plants which use treatment processes other than gravity filtration. This includes the use of slow sand filtration as described in 401 KAR 8:150 for Class I and II water treatment plants.

(c) Combination treatment and distribution system classifications. Class IA-D, IB-D, and IIB-D systems shall be classified as combined treatment and distribution systems.

(3) Water treatment plant or system classifications.

(a) Class I.

1. Class IA-D. Systems which have an assigned design capacity of less than 50,000 gallons of water per day using gravity filtration, except for slow sand filtration, as a part of their treatment scheme and are responsible for the distribution of treated water. ~~[Plants using only physical treatment and disinfection, if the treatment plant operator is also responsible for the distribution system, and which serve a population less than 500.]~~

2. Class IB-D. Systems which have an assigned design capacity of less than 50,000 gallons of water per day using slow sand filtration or treatment processes other than gravity filtration, and are responsible for distribution of treated water. ~~[Plants using only disinfection, if the treatment plant operator is also responsible for the distribution system, and which serve a population less than 500.]~~

(b) Class II:

1. Class IIA. Plants which have an assigned design capacity of 50,000 or more gallons of water per day but less than 500,000 gallons per day using gravity filtration, except slow sand filtration, as a part of their treatment scheme. ~~[physical and chemical treatment, including disinfection, and serving a population less than 3,000.]~~

2. Class IIB-D. Systems which have an assigned design capacity of 50,000 or more gallons of water per day but less than 500,000 gallons per day using slow sand filtration or treatment processes other than gravity filtration, and are responsible for the distribution of treated water. ~~[Plants using only physical treatment and disinfection, if the treatment plant operator is also responsible for the distribution system, and which serve a population equal to or greater than 500 but less than 3,000.]~~

3. Class IIC-D. ~~Plants using only disinfection, if the treatment plant operator is also responsible for the distribution system, and which serve a population equal to or greater than 500 but less than 3,000.]~~

(c) Class III:

1. Class IIIA. Plants which have an assigned design capacity of 500,000 or more gallons of water per day but less than 3,000,000 gallons of water per day using gravity filtration, except slow sand filtration, as a part of their treatment scheme. ~~[physical and chemical treatment, including disinfection, and serving a population equal to or greater than 3,000 and less than 15,000.]~~

2. Class IIIB. Plants which have an assigned design capacity of 500,000 or more gallons of water per day but less than 3,000,000 gallons of water per day using treatment processes other than gravity filtration. ~~[only physical treatment and disinfection, and serving a population equal to or greater than 3,000 and less than 15,000.]~~

3. Class IIIC. ~~Plants using only disinfection, and serving a population equal to or greater than 3,000 and less than 15,000.]~~

(d) Class IV.

1. Class IVA. Plants which have an assigned design capacity of

3,000,000 or more gallons of water per day using gravity filtration, except slow sand filtration, as a part of their treatment scheme.

2. Class IVB. Plants which have an assigned design capacity of 3,000,000 or more gallons of water per day using treatment processes other than gravity filtration, [serving a population equal to or greater than 15,000.]

(4) [(3)] Water distribution systems. Populations shall be determined as specified in 401 KAR 8:200.

(a) Class ID. Distribution systems serving a population less than 1,500.

(b) Class IID. Distribution systems serving a population equal to or greater than 1,500 and less than 15,000.

(c) Class IIID. Distribution systems serving a population equal to or greater than 15,000 and less than 50,000.

(d) Class IVD. Distribution systems serving a population equal to or greater than 50,000.

(5) [(4)] Limited. A limited classification is available to water treatment facilities for schools and semipublic water systems.

(6) [(5)] Special. Special designations may be added to any certificate if necessary to show competency of the operator for a parameter of treatment or operation not covered by the basic requirements for standard classification set forth in this section.

(7) Public water systems which were reclassified pursuant to this administrative regulation as in effect on October 7, 1996 shall comply with the requirements of Section 1 of this administrative regulation by October 7, 1997. This extension of compliance shall [does] not preclude the approval of a provisional staffing plan as provided for in Section 1(8) and (9) of this administrative regulation.

Section 7. Classification of Water Treatment Plant and Water Distribution System Operators. Thirteen (13) subclasses [Nine (9) classes] of certified operators are established and designated as Class I through Class IV for water treatment, Class I through Class IV for distribution, and limited. Each operator classification, except for limited, relates directly to the corresponding classification of water treatment plant or water distribution system outlined in Section 6 of this administrative regulation.

Section 8. Operator Qualifications: Experience, Education and Equivalencies. (1) Requirements. Applicants shall be examined by the cabinet regarding education, experience, and knowledge, as related to the classification of water treatment plants or water distribution systems for which the application applies. Applicants shall pass the required written examination unless granted a waiver to take an oral examination in accordance with Section 3(2) of this administrative regulation.

(2) Classification of water treatment plant operators. Operators shall comply with the experience and educational requirements of this subsection prior to applying for certification.

(a) Class IA-D [and Class IB-D]:

1. Completion of high school or general education development (GED) efficiency; and
2. One (1) year of experience operating [acceptable operation of] a Class IA-D or higher public water system.

(b) Class IB-D:

1. Completion of high school or GED efficiency; and
2. One (1) year of experience operating [acceptable operation of] a Class IB-D or higher public water system.

(c) Class IIA:

1. Completion of high school or GED efficiency; and
2. Two (2) years of experience operating [acceptable operation of] a public water treatment plant [system], with six (6) months of that experience in a Class IIA, IIIA or IVA treatment plant.

(d) [(e)] Class IIIB-D [and Class IIIC-D]:

1. Completion of high school or GED efficiency; and
2. [For Class IIIB-D:] Two (2) years of experience operating [acceptable operation of] a public water system, with six (6) months

of that experience in a Class IA-D, [IIA-] IIIB-D, or higher [IIIA, IIIB, or IVA] treatment system. [plant; or

3. For Class IIIC-D, two (2) years of acceptable operation of a public water system with six (6) months in a Class II, III or IV water treatment plant.]

(e) [(f)] Class IIIA:

1. Completion of high school or GED efficiency; and
2. Three (3) years of experience operating [acceptable operation of] a public water treatment plant [system] with one (1) year in a Class IIA, IIIA, or IVA water treatment plant.

(f) [(g)] Class IIIB:

1. Completion of high school or GED efficiency; and
2. Three (3) years of experience operating [acceptable operation of] a public water treatment plant [system] with one (1) year in a Class IIA, IIIB-D, IIIA, IIIB, [or] IVA, or IVB water treatment plant.

[(f)] Class IIIC:

1. Completion of high school or GED efficiency; and
2. Three (3) years of acceptable operation of a public water system with one (1) year in a Class II, III, or IV water treatment plant.]

(g) Class IVA:

1. A baccalaureate degree from an accredited college or university; and

2. One (1) year [Three (3) years] of experience operating [acceptable operation of] [a public water treatment plant [system], with two (2) years of that experience being in] a Class IIIA or IVA water treatment plant.

(h) Class IVB:

1. A baccalaureate degree from an accredited college or university; and

2. One (1) year [Three (3) years] of experience operating [acceptable operation of] [a public water treatment plant, with two (2) years of that experience being in] a Class IIIA, IIIB, IVA, or IVB water treatment plant.

(i) Limited: An operator of a water treatment facility for a school or for a semipublic water supply shall be entitled to apply for a limited certificate of competency for his particular facility, if he has demonstrated to the cabinet that he has the knowledge and experience required to properly operate the particular water treatment facility for which he is responsible.

(3) Classification of water distribution system operators. Operators shall comply with the experience and educational requirements of this subsection prior to applying for certification.

(a) Class ID:

1. Completion of high school or GED efficiency; and
2. One (1) year of experience operating [acceptable operation of] a distribution system.

(b) Class IID:

1. Completion of high school or GED efficiency; and
2. Two (2) years of experience operating [acceptable operation of] a distribution system with six (6) months in a Class IID, IIID or IVD distribution system.

(c) Class IIID:

1. Completion of high school or GED efficiency; and
2. Three (3) years of experience operating [acceptable operation of] a distribution system, with one (1) year of that experience in a Class IID, IIID or IVD distribution system.

(d) Class IVD:

1. A baccalaureate degree from an accredited college or university; and
2. One (1) year [Three (3) years] of experience operating [acceptable operation of] [a distribution system, with one (1) year of that experience being in] a Class IIID or IVD distribution system.

(4) Substitutions.

(a) If applicable, education may be substituted for a portion of the required experience, as specified below:

1. No substitution for Class I or IV.

2. Successful completion of one (1) year of college work [limited

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~~to curricula in environmental engineering, environmental technology or related scientific fields]~~ may be considered as equivalent to one (1) year of experience, limited to one (1) year for Class II ~~and [7] two (2) years for Class III[- and two (2) years for Class IV].~~

3. Education applied to the experience requirement shall not be applied to the educational requirement or used as continuing education hours toward certification renewal.

(b) If applicable, the cabinet may authorize experience to be substituted for education requirements as specified below:

1. One (1) year experience in active operation of a water system at a Class II level or above shall be considered equivalent to one (1) year of college. Four (4) years of experience may be substituted for the requirement of a college degree by a high school graduate or recipient of a GED.

2. One (1) year of board-approved experience may be considered equivalent to one (1) year of high school. Four (4) years of board-approved experience may be considered equivalent to a high school diploma or a GED, subject to the approval of the board. Operators requesting this substitution shall submit a written request to the cabinet and may be requested to appear before the board.

3. Experience applied to education requirements shall not be applied to the experience requirement.

(c) Substitutions of related experience for treatment plant and distribution experience.

1. Experience gained in distribution system operation may be credited as specified in paragraph (a) of this subsection toward fulfillment of the treatment plant experience requirement as follows: two (2) years of distribution experience ~~[in a related field]~~ may be considered equivalent to one (1) year of treatment experience.

2. Experience gained in drinking water treatment plant operation may be credited as specified in paragraph (a) of this subsection toward fulfillment of the distribution system experience requirements as follows: one (1) year of drinking water treatment experience ~~[in a related field]~~ shall [may] be considered equivalent to one (1) year of distribution experience.

3. Partial credit, as determined by the board, may be given for operating experience in maintenance, laboratories, other work of drinking water treatment or distribution systems and allied trades.

(d) Substitutions for formal education may be as follows: training ~~earned at [credits for]~~ board-approved operator training schools, seminars, and technical courses may be substituted for high school and college requirements upon approval of the board. One (1) year of college work shall equal thirty (30) semester hours or forty-five (45) quarter hours. Six (6) classroom hours of board-approved courses shall equal one (1) training credit, and forty-five (45) training credits shall equal eighteen (18) semester hours of college or one (1) year of high school. One (1) continuing education unit (CEU) shall equal ten (10) classroom ~~[training credit]~~ hours.

Section 9. Documents Incorporated by Reference. The following documents are incorporated by reference and are available for public inspection and copying, subject to the copyright laws, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday, at the Division of Water, 14 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601:

(1) "Drinking Water or Wastewater Operator Certification Application", "DEP 6047 (8/96)", available from the Kentucky Natural Resources and Environmental Protection Cabinet, Division of Water, Frankfort, Kentucky[- January 1992].

(2) "Application for Certificate Renewal", "DEP 6007 (8/96)", available from the Kentucky Natural Resources and Environmental Protection Cabinet, Division of Water, Frankfort, Kentucky[- January 1992].

Section 10. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: April 9, 1997

FILED WITH LRC: April 10, 1997 at 9 a.m.

PUBLIC PROTECTION AND REGULATION CABINET Office of the Petroleum Storage Tank Environmental Assurance Fund (As Amended)

415 KAR 1:130. Small owners ~~[operators]~~ tank removal account.

RELATES TO: KRS 224.60-130, 224.60-140

STATUTORY AUTHORITY: KRS 224.60-130(2)(a), (b), (i)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(2)(i) ~~[- as amended by HB 167 (1996);]~~ requires the fund to establish an account to reimburse small owners for the reasonable cost of tank system removal. KRS 224.60-130(2)(a) and (b) require the agency to promulgate administrative regulations to establish and administer the fund. [This account may not be used when the owner intends to replace or upgrade the tank system.] This administrative regulation establishes the eligibility requirements and the ranges of reimbursement for this account.

Section 1. Applicability. The provisions of this administrative regulation shall apply ~~[only]~~ to an owner ~~[owners]~~ of a petroleum storage tank ~~[or tanks]~~ containing motor fuels who is [that are] required by state or federal law to remove or upgrade the [their] tanks on or before December 22, 1998. This account shall [may] not be used if [when] the owner intends to replace or upgrade the tank system.

Section 2. Eligibility. ~~[(1)]~~ An owner shall [may] be eligible for reimbursement from this account if ~~[the following requirements are met]:~~

(1)(a) The owner is an individual who:

1. Has a five (5) year average adjusted gross income of \$50,000 or less; and

2. Owns full or partial interest in ten (10) or fewer tanks;

(b) The owner is a partnership that:

1. Has a five (5) year average adjusted gross income of \$50,000 or less; and

2. The members of the partnership own full or partial interest in a total of ten (10) or fewer tanks;

(c) The owner is a corporation:

1. Has [having] a five (5) year average total income of less than \$50,000; and

2. The shareholders of the corporation own full or partial interest in ten (10) or fewer tanks; or

(d) The owner is a nonprofit corporation.

~~[(a) The owner is an individual having a five (5) year average adjusted gross income of \$50,000 or less, and owns full or partial interest in ten (10) or fewer tanks;~~

~~[(b) The owner is a partnership having a five (5) year average adjusted gross income of less than \$50,000, and the members of the partnership own full or partial interest in a total of ten (10) or fewer tanks;~~

~~[(c) The owner is a Subchapter S corporation or a limited liability corporation having a five (5) year average total income of less than \$50,000, and the shareholders in the corporation own full or partial interest in a total of ten (10) or fewer tanks;~~

~~[(d) The owner is a nonprofit corporation and owns ten (10) or fewer tanks;~~

(2)(a) [(a)] The tanks are located on a facility that is or was involved in the retail sale or wholesale distribution of motor fuels. This subsection shall not apply if the owner is a nonprofit corporation;

(b) ~~[(f)]~~ The tanks are registered with the Division of Waste Management, pursuant to KRS 224.60-105;

(c) ~~[(g)]~~ The owner certifies that the retail sale or wholesale distribution of motor fuels at the facility will permanently cease upon removal of the tanks and that all known tanks at the facility are being removed or closed in place; and

(d) ~~[(h)]~~ The owner has owned the tanks for more than one (1) year prior to the date of the application for this account ~~[assistance from the fund]~~.

(3) ~~[(2)]~~ The discovery of previously unknown or abandoned tanks shall not effect the eligibility of an otherwise eligible owner.

(4) ~~[(3)]~~ It is not necessary for the tanks to be in operation prior to their removal.

Section 3. Account Use. (1) Funds in this account shall be used for reimbursing the reasonable and necessary cost of:

(a) ~~[Reimbursing the necessary and reasonable costs of]~~ The removal and disposal of petroleum storage tanks containing motor fuels;

(b) ~~[Reimbursing the necessary and reasonable costs of]~~ Disposal of contaminated backfill or contaminated water ~~[surface drainage]~~ if required by law; and

(c) ~~[Reimbursing]~~ Any post removal or confirmation sampling required by the Division of Waste Management;

(2) This account shall not be used for replacing or upgrading the tank system ~~[tank systems]~~.

(3) ~~(a)~~ If contamination requiring corrective action is found by analytical sample, the facility shall be eligible for the reimbursement of the cost of the tank system removal, but shall not be eligible for payment of corrective action cost from this account.

(b) Upon receipt by the fund of a notice from the cabinet requiring corrective action at the facility [such sample], the owner [facility] shall [will] be reimbursed for the tank system removal and then transferred for review under the financial responsibility account, 415 KAR 1:060, or the petroleum storage tank account, 415 KAR 1:070. [appropriate fund account.]

(4) If a [an actionable] release requiring corrective action is confirmed from a tank system eligible for participation in this account, and the owner has interest in five (5) or fewer tanks, the eligible corrective action cost may be reimbursed from the fund's financial responsibility account, 415 KAR 1:060, or the petroleum storage tank account, 415 KAR 1:070, to be ranked pursuant to [rank one,] 415 KAR 1:090, [Section 1(1), as appropriate, provided that] The owner is required to file [file] an application for assistance in accordance with 415 KAR 1:080 and adhere [adheres] to the requirements of 415 KAR 1:080, 415 KAR 1:110 and 415 KAR 1:114.

(5) If a [an actionable] release requiring corrective action is confirmed from a tank system eligible for participation in this account, and the owner has interest in six (6) to ten (10) tanks, the eligible corrective action cost may be reimbursed from the fund's financial responsibility account, 415 KAR 1:060, or the petroleum storage tank account, 415 KAR 1:070, ranked for priority in accordance with [ranks two (2) through thirteen (13),] 415 KAR 1:090, Section 1(1)(b) or [(2),] 415 KAR 1:090(6), [as appropriate, provided that] The owner is required to file [file] an application for assistance in accordance with 415 KAR 1:080 and adhere [adheres] to the requirements of 415 KAR 1:080, 415 KAR 1:110 and 415 KAR 1:114.

(6) ~~(a)~~ If obligations from this account exceed \$3,000,000 during any fiscal year ~~[or any part thereof]~~, the secretary may suspend further obligations from this account. The suspension shall be in effect until the secretary determines that further obligations from this account will not threaten [jeopardize] the solvency [financial stability] of the fund.

(b) This determination shall be made by the secretary by reviewing:

1. Fund receipts and expenditures;
2. Audit reports;

3. Actuarial studies;

4. Projected revenue; and

5. Projections on the number of tanks to be removed.

(7) Obligations from this account shall cease on June 30, 2002 ~~[five (5) years from the effective date of this administrative regulation].~~

Section 4. Application. (1) The owner shall file an application for participation in this account no less than forty-five (45) days prior to the removal of the tank or tanks ~~[except as provided in Section 7 of this administrative regulation]~~. Application shall be made on the Application for Tank Removal Assistance form, dated May, 1997, ~~hereby incorporated by reference. This form may be inspected and obtained at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 811 Leewood Drive, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the fund are 8 a.m. to 4:30 p.m., local prevailing time.~~ In addition to a complete application, the owner shall provide the following information:

(a) Verification of income level by five (5) years of income tax returns ~~[or other fund approved method]~~;

(b) A copy of the Notice of Intent to Permanently Close Underground Tank System, filed with the cabinet;

(c) Proof of tank registration with the cabinet;

(d) A copy of the contract with a State Fire Marshal approved tank remover;

(e) A site map delineating the facility boundaries and the location of all tank pits and areas to be impacted by the removal; and

(f) Color photographs of the facility and the areas to be impacted by the tank removal.

(2) (a) Within forty-five (45) days of the receipt of a complete application, the fund will issue a letter notifying the owner of its eligibility and of the amount obligated for the removal or notifying that the facility is not eligible for participation in this account.

(b) Removal of the tank system shall not begin until the approval of an obligation by the fund [except as provided in Section 7 of this administrative regulation]. Failure to comply with this requirement shall [will] result in the fund denying the reimbursement.

Section 5. Removal Costs. (1)(a) Reimbursement from this account shall be determined from the following table:

Size of Largest Tank in Pit (gallons)	Number of Tanks in Pit					Each Extra Tank up to 10
	1	2	3	4	5	
Less than 3,100	\$3,000	\$4,900	\$6,400	\$7,900	\$9,400	\$1,500
3,101 to 5,100	\$3,400	\$5,500	\$7,500	\$9,000	\$10,500	\$1,500
5,101 to 10,000	\$4,900	\$7,400	\$9,700	\$11,800	\$13,800	\$1,800
Greater than 10,000	\$5,400	\$8,600	\$11,800	\$14,000	\$16,900	\$2,200

(b) In addition to the cost listed above, the fund shall reimburse a one (1) time amount, which shall not [te] exceed \$2,000, for the preparation and submission of a Closure Assessment Report. This shall include the cost of a facility classification guide, if required by the cabinet. The fund shall also reimburse a one (1) time amount of \$350 for the mobilization and demobilization of equipment, [including, if required by the cabinet, a Facility Classification Guide.]

(c) If more than one (1) tank pit is located on a facility, the reimbursement shall be calculated by adding the matrix value given for each pit, plus allowable subsection (3) of this section cost.

(2) The following costs shall be [are] [considered to be] included in the costs listed in subsection (1)(a) of this section:

(a) Tank system removal, cleaning and disposal;

- (b) Removal of twenty-five (25) feet of associated piping outside of ~~the~~ the tank pit;
- (c) Removal of the pump island and canopy ~~islands and canopies~~;
- (d) Drumming and disposal of cleaning material;
- (e) Backfilling to replace tank volume;
- (f) Concrete or asphalt surface removal;
- (g) Equipment and materials necessary for the removal and closure of a tank system;
- (h) Preparation of any permit ~~or permits~~ required for tank system removal or testing;
- (i) Excavation and loading of materials;
- (j) Collection of samples;
- (k) All labor charges relating to subsections (a) through (j) of this section.

(3) The following items are not included in subsection (1)(a) of this section costs and the ~~actual~~ costs, including labor, of these items may be added to the appropriate subsection (1)(a) of this section cost if necessary to achieve closure and the costs are reasonable:

- (a) Surface replacement;
- (b) Transportation, disposal and replacement of contaminated backfill;
- (c) Disposal of asphalt surface material;
- (d) Installation of up to three (3) ~~downgradient~~ monitoring wells, to the extent required by law. Cost of additional wells may be allowed if the additional wells are required in writing by the cabinet;
- (e) Disposal or recycling of tank contents or waste;
- (f) Removal, transportation and off-site disposal of [pit] water, if required by law;
- (g) Laboratory analysis ~~[analytical sampling]~~, to the extent required by law; and
- (h) All costs in this section shall be subject to the ranges set forth in 415 KAR 1:110.

Section 6. Claims. (1) Upon receipt of a notice from the cabinet that no further action is necessary at the facility or a notice from the cabinet of the need to perform corrective action, the owner shall submit a request for reimbursement. The owner shall submit the ~~his~~ claim on the Claim Payment Request for Tank Removal form established by the fund, dated May 1997, ~~hereby incorporated by reference. This form may be inspected and obtained at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the fund are 8 a.m. to 4:30 p.m., local prevailing time.~~

(2) In addition to the completed claim form, the owner shall submit the following in support of the request:

- (a) The Closure Assessment Report;
- (b) Original invoices in support of any costs claimed under Section 5(3) of this administrative regulation; and
- (c) A copy of the "no further action" notice or the notice requiring corrective action from the cabinet.

(3) ~~[(2)]~~ The fund shall review the claim requests for the following:

- (a) The number and size of tanks removed;
- (b) Verification of proper costs from Section 5(2) of this administrative regulation; and
- (c) Review of the necessity and reasonableness of any costs claimed under Section 5(3) of this administrative regulation.

(4) ~~[(3)]~~ The fund may request supporting documentation in addition to that listed in subsection (1) of this section if necessary to verify the reasonableness or necessity of a ~~any~~ cost.

(5) ~~[(4)]~~ If circumstances necessitate the closure in place of tanks, rather than their removal, the costs incurred may be reimbursed from this account. The owners bears the burden of showing the necessity for the closure in place and the cost effectiveness of closure in place verses tank removal.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Application for Tank Removal Assistance (May, 1997), Public Protection and Regulation Cabinet;

(b) Claim Payment Request for Tank Removal (May, 1997), Public Protection and Regulation Cabinet.

(2) These forms may be inspected and obtained at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the fund are 8 a.m. to 4:30 p.m.

LAURA M. DOUGLAS, Secretary
ROBERT E. NICKEL, Executive Director
APPROVED BY AGENCY: May 14, 1997
FILED WITH LRC: May 15, 1997 at 10 a.m.

JUSTICE CABINET
Kentucky Department of Corrections
(As Amended)

501 KAR 8:010. Execution hearings, ~~procedures, disposition~~.

RELATES TO: KRS Chapters 13B, ~~[496, 497]~~ 431
STATUTORY AUTHORITY: KRS 196.035, 197.020, 431.240
NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes [and 197.020 authorize] the commissioner to promulgate administrative regulations for the proper administration of the department. This administrative regulation is necessary because of the legislative changes in KRS 431.240(2). The function of this administrative regulation is to create a uniform and timely process for the condemned to put in issue his competency to be executed. [or any division therein.] [The Secretary of the Kentucky Corrections Cabinet is authorized by KRS 196.035, 197.020 to adopt, amend or rescind administrative regulations necessary and suitable for the proper administration of the cabinet or any division therein.]

Section 1. Definitions. (1) "Condemned person" means a person for whom a specific day of execution is fixed by a current mandate from the Kentucky Supreme Court or a current warrant signed by the Governor.

(2) "Insane" means the condemned person does not have the ability to understand:

- (a) He is about to be executed; and
- (b) Why he is to be executed.

Section 2. Petition for a Hearing. A condemned person or his attorney seeking to have a scheduled execution date stayed pursuant to KRS 431.240(2) based on an allegation the condemned person is insane may file a petition for an administrative hearing with the Warden of the Kentucky State Penitentiary or his deputy at the Kentucky State Penitentiary, Route 2, Box 128, Eddyville, Kentucky 42038-0128. [The petition shall be filed at least seven (7) calendar days prior to the day fixed for execution, unless the warden permits a later filing for good cause shown.] The petition shall:

- (1) Be in writing;
- (2) Allege with specificity, the grounds supporting a belief that [in support of a belief] the condemned is insane;
- (3) Request a hearing; ~~[and]~~
- (4) Be accompanied by at least one (1) affidavit setting forth facts known to the affiant which allegedly establish probable cause to believe the condemned person is insane; and
- (5) Be filed at least seven (7) calendar days prior to the day fixed for execution, unless the warden permits a later filing on a showing of good cause.

Section 3. Warden's Consideration of Petition. (1) Within twenty-four (24) hours after a petition is filed, the warden shall:

(a) [(4)] Deny the petition without a hearing if the petition or [and any] affidavit does not establish probable cause to believe the condemned person is insane; or

(b) [(2)] Grant a hearing.

(2) A ruling denying the petition without a hearing pursuant to this section shall be the final order of the agency subject to judicial review.

Section 4. Notification of Warden's Ruling on Petition. The warden shall immediately notify the following of his decision to [either] deny the petition without a hearing or to grant a hearing:

(1) The Governor;

(2) The Attorney General;

(3) Counsel for the condemned person; and

(4) The condemned person.

Section 5. Assignment and Conduct of Hearing. (1) The provisions of KRS 13B.010-13B.170 shall govern a hearing granted by the warden pursuant to this administrative regulation. [These provisions are supplemented as follows:]

(2) [(1)] The Attorney General of the Commonwealth of Kentucky shall be given notice of any petition filed. If the Attorney General files a petition to intervene it shall be granted. [permitted to intervene as a matter of right.]

(3) [(2)] The warden shall serve as the agency head.

(4) [(3)] The hearing shall be conducted by the hearing officer in the presence of the warden.

[Section 6. Nothing in this administrative regulation shall be construed to limit the Governor of the Commonwealth or any court of this Commonwealth in the exercise of any powers they may have to act in any other manner under the law or Constitution of Kentucky.]
["Secretary" means the Secretary of the Corrections Cabinet.

(2) "Cabinet" means the Kentucky Corrections Cabinet.

(3) "Hearing officer" means a hearing officer appointed by the secretary of the cabinet.

(4) "Proceeding" means any proceeding before a hearing officer to determine competency for execution.

(5) "Day" means a calendar day.

(6) "Order" means the order of the hearing officer.

(7) "Petitioner" means a condemned person who requests a hearing as to competency to be executed with a verified petition as described in Section 2 of this administrative regulation.

(8) "Condemned person" means a person who has received a sentence of death.

Section 2. Petition for Competency to be Executed. Pursuant to KRS 431.240(2), if a condemned person files a petition for a competency to be executed hearing, said petition shall be filed within three (3) days after receipt of the execution warrant with the warden of the Kentucky State Penitentiary or his deputy at the Kentucky State Penitentiary, Route 2, Box 128, Eddyville, Kentucky 42033-0128. Said petition shall be in writing, shall state the grounds for the belief that the condemned person is not competent to be executed, and shall request a competency to be executed hearing. The petition must be accompanied with a written certification from psychiatrist and psychologist duly licensed in the Commonwealth of Kentucky verifying that said petitioner does not have the mental capacity to understand the nature of the death penalty and why it is to be imposed upon him. No hearing will be scheduled or granted without the filing of the certificate by the licensed psychiatrist and psychologist.

Section 3. Assignment of Hearing; Filings. (1) Once a Petition for Competency to be Executed is filed with the warden, the Secretary of the Corrections Cabinet will assign a hearing officer to conduct a

hearing and issue, a Findings of Fact, Conclusions of Law and Order. Cases may be withdrawn by agreement of the parties, dismissed for cause, or otherwise disposed of before hearing in the discretion and judgment of the hearing officer.

(2) An adjudication by the hearing officer, if dismissed or disposed of as provided in subsection (1) of this section, shall become the final order of the hearing officer under the provision of KRS 431.240 and immediately appealable to the Supreme Court within two (2) days from the date of the issue.

(3) Subsequent to the assignment of the case to a hearing officer and prior to the issuance of any decision, all papers or pleadings shall be filed with the hearing officer and the parties prior to the issuance of any decision at the address given in the notice of hearing.

(4) All evidence and witnesses of both parties and all proof must be presented at the time of hearing. No additional evidence will be permitted thereafter except in unusual circumstances and within the discretion of the hearing officer. No subpoenas will be issued.

(5) All hearings shall be held in Eddyville, Kentucky unless otherwise ordered by the hearing officer.

(6) Unless otherwise ordered, all filing may be accomplished by use of first class mail.

(7) Filing is deemed effective at the time of mailing.

Section 4. Scope of Rules; Applicability of Kentucky Rules of Civil Procedure. Technical rules of evidence and procedure do not apply.

Section 5. Computation of Time. (1) In computing any period of time prescribed or allowed in these rules, the day from which the designated period begins to run shall be included unless it is a Saturday, Sunday, or federal or state holiday, in which event the period begins to run on the next working day. The last day of the period so computed is to be included unless it is a Saturday, Sunday or legal holiday in which event the period runs until the end of the next working day. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

(2) Where service of a pleading or documents is by mail pursuant to Section 2 of this regulation, three (3) days shall be added to the time allowed by these rules for the filing of a responsive pleading.

Section 6. Notice and Time of Hearing. (1) Notice of hearings shall be given to all parties within five (5) days from the receipt of the request for hearing unless otherwise ordered by the secretary or his designee. No hearing shall be held later than ten (10) days from the date of request.

(2) The notice of hearing shall include:

(a) Statement of the time and place of the hearing.

(b) The name and address of the assigned hearing officer.

(c) The name and address of the parties and legal counsel, if any.

(d) Statement of the legal authority and jurisdiction under which the hearing is held.

Section 7. Continuance of Hearing. (1) Continuance of a hearing ordinarily will not be allowed.

(2) Except in the case of an extreme emergency or in unusual circumstances, no such request will be considered unless received in writing at least two (2) days in advance of the time set for the hearing. The request for continuance must include the reasons therefor.

(3) Continuance of hearing not in excess of three (3) days may be granted in the discretion of the hearing officer. No additional continuance may be granted without approval of the secretary.

Section 8. Failure to Appear. (1) Subject to the provisions of subsection (2) of this section, the failure of a party to appear at a hearing shall be deemed to be a waiver of all rights except the rights to be served with a copy of the decision of the hearing officer.

(2) Requests for a newly scheduled hearing must be made in the

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~~absence of extraordinary circumstances within one (1) day after receipt of the notice of the scheduled hearing date.~~

~~(3) The hearing officer, upon a showing of good cause, may excuse such failure to appear. In such event, the hearing will be rescheduled.~~

~~Section 9. Service. (1) At the time of filing pleadings or other documents a copy thereof shall be served by the filing party on every other party.~~

~~(2) Service upon a party who has appeared through a representative shall be made only upon such representatives.~~

~~(3) Unless otherwise ordered, service may be accomplished by postage prepaid first class mail or by personal delivery. Service is deemed effective at the time of mailing (if by mail) or at the time of personal delivery (if by personal delivery).~~

~~(4) Proof of service shall be accomplished by a written statement of the same which sets forth the date and manner of service. Such statement shall be filed with the pleading or document.~~

~~(5) Where service is accomplished by posting, proof of such posting shall be filed not later than the first working day following the posting.~~

~~Section 10. Statement of Position. At any time prior to the commencement of the hearing before the hearing officer, any person entitled to appear as a party may file a statement of position with respect to any or all issues to be heard.~~

~~Section 11. Response to Motions. Any party upon whom a motion is served shall have two (2) days from service of the motion to file a response.~~

~~Section 12. Failure to File. Failure to file any pleading pursuant to these rules when due, may, in the discretion of the hearing officer, constitute a waiver of right to further participation in the proceedings.~~

~~Section 13. Withdrawal of Notice of Hearing. At any stage of a proceeding, a party may withdraw his notice of hearing, subject to the approval of the hearing officer.~~

~~Section 14. Prehearing Conference. (1) At any time before a hearing, the hearing officer, on his own motion or on motion of a party, may direct the parties or their representatives to exchange information or to participate in a prehearing conference for the purpose of considering matters which will tend to simplify the issues or expedite the proceedings.~~

~~(2) The hearing officer may issue a prehearing order which includes the agreements reached by the parties. Such order shall be served on all parties and shall be a part of the record.~~

~~Section 15. Requests for Admissions. (1) At any time after the filing of responsive pleadings, any party may request of any other party admissions of facts to be made under oath. Each admission requested shall be set forth separately. The matter shall be deemed admitted unless, within three (3) days after service of the request, or within such shorter or longer time the hearing officer may prescribe, the party to whom the request is directed serves upon the party requesting the admission of a specific written response.~~

~~(2) Copies of all requests and responses shall be served on all parties in accordance with the provisions of these rules and filed with the secretary within the time allotted and shall be a part of the record.~~

~~Section 16. Discovery Depositions and Interrogatories. (1) Except by special order of the hearing officer, discovery depositions of parties, or witnesses, and interrogatories directed to parties, intervenors, or witnesses shall not be allowed.~~

~~(2) In the event the hearing officer grants an application for the conduct of such discovery proceedings, the order granting the same~~

~~shall set forth appropriate time limits governing the discovery.~~

~~Section 17. Failure to Comply with Orders for Discovery. If any party fails to comply with an order of the hearing officer to permit discovery in accordance with the provisions of these rules, the hearing officer may issue appropriate orders.~~

~~Section 18. Reporter's Fees. Reporter's fees shall be equally shared by all parties. This shall include the reporter's per diem costs and the cost of the original transcript. All other copies will be paid by the requesting party unless the condemned party is determined a needy person pursuant to KRS 31.110.~~

~~Section 19. Transcript of Testimony. All hearings shall be videotaped. A copy of the video tape taken at the hearing, duly certified by the reporter, shall be filed with the hearing officer before whom the matter was heard. The hearing officer shall promptly serve notice upon each of the parties of such filing. Participants desiring copies of such video tapes may obtain the same from the official reporter upon payment of fees fixed therefor.~~

~~Section 20. Duties and Powers of Hearing Officers. It shall be the duty of the hearing officer to conduct a fair and impartial hearing, to assure that the facts are fully elicited, to adjudicate all issues and avoid delay. The purpose of the hearing is to determine whether the petitioner does not have the mental capacity to understand the nature of the death penalty and why it is to be imposed on him, as pled in the petition. The hearing officer shall have authority with respect to cases assigned to him between the time he is designated and the time he issues his decision, subject to the rules and administrative regulations of the cabinet; to:~~

~~(1) Administer oaths and affirmations;~~

~~(2) Rule upon offers of proof and receive relevant evidence;~~

~~(3) Regulate the course of the hearing and, if appropriate or necessary, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper questions;~~

~~(4) Hold conferences for the settlement or simplification of the issues;~~

~~(5) Dispose of procedural requests or similar matters, also to dismiss petition or portions thereof, and to order hearings reopened prior to issuance of this final decision;~~

~~(6) Examine witnesses and to introduce into the record documentary or other evidence;~~

~~(7) Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;~~

~~(8) Adjourn the hearing as the needs of justice and good administration require; and~~

~~(9) Take any other action necessary under the foregoing and authorized by the published rules and administrative regulations of the cabinet.~~

~~Section 21. Exhibits. (1) All exhibits offered in evidence shall be numbered and marked with a designation identifying the party or intervenor by whom the exhibit is offered.~~

~~(2) In the absence of objection by another party exhibits shall be admitted into evidence as a part of the record, unless excluded by the hearing officer pursuant to Section 25 of this administrative regulation.~~

~~(3) Unless the hearing officer finds it impractical, a copy of each such exhibit shall be given to the other parties.~~

~~(4) All exhibits offered, but denied admission into evidence, shall be identified as in subsection (1) of this section and shall be placed in a separate file designed for rejected exhibits.~~

~~Section 22. Burden of Proof. In all proceedings commenced by the filing of a petition for a hearing, the burden of proof shall rest with~~

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the petitioner. Petitioner must establish by substantial evidence that the condemned person with an established execution date does not understand the nature of the death penalty and why it is to be imposed upon him.

~~Section 23. Objections. (1) Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence or a ruling of the hearing officer, may be stated orally or in writing, accompanied by a short statement of the grounds for the objection, and shall be included in the record. No such objection shall be deemed waived by further participation in the hearing.~~

~~(2) Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the record of the proceeding.~~

~~Section 24. Final Order. The decision of the hearing officer shall be issued within three (3) days of the hearing and shall include findings of fact, conclusions of law, and an order disposing of all issues before him.~~

~~Section 25. If the hearing officer determines that the prisoner is not mentally competent to be executed the warden will notify the governor and the governor shall stay the execution and order the Corrections Cabinet to continue to monitor the condemned person. Within six (6) months of a determination that the condemned person is not competent to be executed a rehearing will be conducted to determine whether or not the condemned person is competent to be executed. Said hearing will be conducted in the same manner and under the same conditions as provided in these administrative regulations.~~

~~Section 26. If at the second competency to be executed hearing it is determined by the hearing officer that the condemned person is competent to be executed, the order shall be forwarded by the warden and secretary to the governor who will then issue the appropriate warrants for execution.~~

DOUG SAPP, Commissioner

APPROVED BY AGENCY: April 7, 1997

FILED WITH LRC: April 14, 1997 at 4 p.m.

EDUCATION, ARTS, AND HUMANITIES CABINET Kentucky Board of Education Department of Education Bureau of Learning Support Services (As Amended)

704 KAR 3:305. Minimum ~~[unit]~~ requirements for high school graduation ~~[; high school transcripts]~~.

RELATES TO: KRS 156.160(1)(a), (c), 158.6451

STATUTORY AUTHORITY: KRS 156.070, 156.160(1)(a), (c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires ~~[that]~~ the Kentucky [State] Board of [for Elementary and Secondary] Education [shall] to adopt ~~[rules and]~~ administrative regulations relating to the courses of study for the different grades and the minimum requirements for high school graduation. The courses of study are described in the program of studies, 704 KAR 3:303. This administrative regulation establishes the ~~[relates to the establishment of]~~ minimum requirements necessary for entitlement to a high school diploma, including the requirements beginning with the graduating class of 2002. [This administrative regulation also establishes minimum requirements for the content of a high school transcript.]

Section 1. Until the graduating class of 2002, each student in a

common school shall have a total of at least twenty (20) credits for high school graduation. Those credits shall include the following minimum requirements: [All students in the common schools and all students in the private or parochial schools which are accredited by the State Board for Elementary and Secondary Education shall meet the following minimum credit requirements for high school graduation:]

(1)(a) Language arts - 4;

(2) [(b)] Social studies - 2 (including one (1) credit in U.S. History).

(3) [(c)] Mathematics - 3;

(4) [(d)] Science - 2;

(5) [(e)] Health - 1/2;

(6) [(f)] Physical education - 1/2.

[(2)(a) Required—12;]

(7) [(b)] Electives - 8[;

(e) Total—20].

Section 2. (1) Beginning with the graduating class of 2002, each student in a common school [the common schools] shall complete an individual graduation plan which incorporates emphasis on career development [vocational studies] and shall have a total of at least twenty-two (22) credits for high school graduation. Those credits shall include the following minimum requirements: [All students shall have completed at least two (2) credits in English at the ninth and tenth grade levels, except those repeating such courses. Students transferring from nonaccredited schools, as defined in 704 KAR 3:307, and schools properly accredited under the laws of other states may be awarded ninth and tenth grade required credits under the procedures set forth in 704 KAR 3:307, and, if such is not possible, may be allowed to complete such required credits beyond the tenth grade level.]

(a) Language arts - four (4) credits (including English I, II, III, and IV);

(b) Social studies - three (3) credits (to incorporate U.S. History, Economics, Government, World Geography, and World Civilization);

(c) Mathematics - three (3) credits (including Algebra I, Geometry, and one (1) elective as provided in the program of studies, 704 KAR 3:303);

(d) Science - three (3) credits (including life science, physical science, and earth and space science as provided in the program of studies, 704 KAR 3:303);

(e) Health - one-half (1/2) credit;

(f) Physical education - one-half (1/2) credit;

(g) History and appreciation of visual and performing arts (or another [a performing] arts course which incorporates this [such] content) - one (1) credit; and

(h) Electives - seven (7) credits.

(2) A local board of education may substitute an integrated, applied, interdisciplinary or higher level course for a required course if the alternative course provides rigorous content and addresses the same applicable components of 703 KAR 4:060. If a substitution is made, a rationale and course description shall be filed with the Department of Education.

(3) For students with disabilities, a local board of education may substitute a functional, integrated, applied, interdisciplinary or higher level course for a required course if the alternative course provides rigorous content and addresses the same applicable components of 703 KAR 4:060. If a substitution is made, a rationale and course description shall be filed with the Department of Education.

(4) Each local board of education shall maintain a copy of its local policy on high school graduation requirements.

(a) This policy shall include a description [provided by the local board] of how the requirements address KRS 158.6451(1)(b) [(b)] and 703 KAR 4:060.

1. If a high school does not have a school council, this description shall be provided by the local board.

2. [as to a high school that does not have a school council:] If a high school ~~does have [has]~~ a school council, this [the] description [of how the requirements address KRS 158.6451(1)(b) and 703 KAR 4:060] shall be provided by the school council to the local board of education.

(b) A letter of assurance of compliance and a copy of the local policy from the local board of education and school council shall be submitted to the Department of Education by the local board. If the local board or school council amends its policy, a letter of assurance of compliance referencing the amendments shall be filed with the Department of Education by the local board.

Section 3. (1) A [Each] student who satisfactorily completes the requirements of this administrative regulation [and such credits] and additional requirements as may be imposed by a local board of education shall be awarded a graduation diploma.

(2) [Local boards of education may grant different diplomas to these students who complete credits above the minimum number of credits as established by the State Board for Elementary and Secondary Education.

(3) The local [school district] board of education shall award the diploma.

Section 4. [Nothing in] This administrative regulation shall not be interpreted as prohibiting a [any] local governing board, superintendent, principal or teacher from awarding special recognition to a student [students].

Section 5. If [When] the severity of an exceptional student's disability [handicap(s)] precludes a course of study leading to receipt of a diploma, an alternative program shall be offered. This program shall be [is] based upon student needs, as specified in the individual educational plan, and shall [is to] be reviewed at least annually. A [The] student who completes this [such a] course of study shall be recognized [is entitled to recognition] for achievement. This may be accomplished by the local [school district] board of education awarding a certificate.

[Section 6. A local school board shall establish a policy which requires a high school transcript to include at least the following:

- (1) Courses completed and grades;
- (2) Attendance record;
- (3) Achievement test results;
- (4) Vocational aptitude assessment, if available; and
- (5) Employability skills information, if available.]

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

Wilmer S. Cody, Commissioner of Education

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: April 10, 1997
FILED WITH LRC: April 10, 1997 at 4 p.m.

WORKFORCE DEVELOPMENT
Department for the Blind
(As Amended)

782 KAR 1:030. Scope and nature of services.

RELATES TO: KRS 163.450 to 163.470, 29 USC, 701 [et seq.], 34 CFR 361

STATUTORY AUTHORITY: KRS 163.470(5) [-29 USC, 701 et seq.], 34 CFR 361.42

NECESSITY, FUNCTION, AND CONFORMITY: KRS 163.470(5) requires the department to establish and implement policies and procedures for carrying out the program of services for the blind and visually impaired. This administrative regulation is necessary to establish the scope, nature, conditions, criteria, and procedures of provided services. [KRS 163.470(6) requires the Department for the Blind to implement policies and procedures for carrying out programs of services for persons of the Commonwealth who are blind or visually impaired. Under its State Plan for Vocational Rehabilitation authorized under Title I of the Rehabilitation Act of 1973, as amended, the department is required to establish and maintain written policies and procedures covering the scope and nature of the services it provides and the conditions, criteria, and procedures under which each service is provided.]

Section 1. Assessment. (1) To be eligible for rehabilitative services, an individual shall be examined by a medical specialist qualified in the diagnosis and treatment of functional impairment in terms of employment outcome.

(2) The department may seek a second opinion regarding the determination of impairment and the need for rehabilitative services. [In determining the eligibility of an individual or in determining the scope and nature of services needed by an individual, the department may obtain a second opinion from a specialist qualified and skilled in diagnosis and treatment and licensed in accordance with state laws and administrative regulations.]

Section 2. Vocational Goal. Services shall be provided in accordance with an individualized, written rehabilitation program that:

(1) Emphasizes the:

(a) Determination; and

(b) Achievement of a vocational goal; and

(2) Is consistent with the abilities and capacities of the eligible individual. [Services shall be provided in accordance with an individualized written rehabilitation program which emphasizes primarily the determination and achievement of a vocational goal which shall be consistent with the abilities and capacities of the eligible individual.]

Section 3. Vocational Training at Institutions of Higher Education.

(1) A service provided at an institution of higher education shall comply with Section 17 of this administrative regulation on comparable benefits. [Services provided at institutions of higher education are subject to Section 17 of this administrative regulation on comparable benefits.]

(2) The amount paid by the department for tuition shall not exceed the highest rate for tuition charged by an in-state public institution of higher education, unless the eligible individual is in a degree program not offered by an in-state public institution.

(3) The department may pay a fee [for fees] associated with attendance at an educational institution if the fee is [only if such fees are] required of an individual who attends [for all individuals who attend] the institution.

(4) The department shall pay the cost of books, supplies, tools and other course material in accordance with:

(a) The need analysis prepared by the student financial aid office of the institution; or

(b) The actual cost of materials, if a need analysis is not available. [Eligible individual need for books, supplies, tools and other materials may vary according to the school and course work, but the amount the department may pay shall not exceed the need analysis made by the student financial aid office of the institution the eligible individual attends, or if such analysis is not available, then the department shall pay only for actual costs of materials needed for each course.]

(5) The eligible individual shall maintain full-time status as defined

by the institution, unless a status of less than full-time is needed to graduate in the current year.

(6) By the end of the second term or semester and throughout each subsequent term or semester, an eligible individual shall achieve:

(a) An overall "C" grade average; or
(b) Standing required for admission, licensure, or certification.

(7) An exception:

(a) May be granted for this subsections (5) and (6) of this section if the eligible individual:

1. Has a need or circumstance that renders him unable to maintain those standards; and

2. Notifies the counselor of the need or circumstance prior to a change of standing at the institution.

(b) Shall not compromise the program requirement that the employment objective of the client be:

1. Realistic; and

2. Attainable.

(c) To subsection (6) of this section shall not be extended beyond one (1) year.

(d) Shall be consistent with 34 CFR 80.22. [By the end of the second term or semester, an eligible individual must have achieved an overall "C" grade average or such standing required for admission, licensure or certification and must maintain this standing for each subsequent term or semester.

(7) Exceptions may be granted to subsections (5) and (6) of this section, but only according to the following criteria:

(a) The eligible individual shall have needs or circumstances which render the eligible individual unable to maintain the standards in subsections (5) and (6) of this section;

(b) The eligible individual shall notify the counselor of the needs or circumstances prior to any change of standing at the institution;

(c) Any exception shall not compromise the program requirements that the employment objectives of the client must be realistic and attainable;

(d) Any exception to subsection (6) of this section shall not be extended beyond one (1) year; and

(e) Any exception shall be consistent with federal regulations contained in EDGAR (34 CFR 80.22) which provide that costs to be allowable under a grant program must be necessary and reasonable for the proper administration of the grant program.]

(8) The eligible individual shall provide the counselor with a copy of course grades as soon as possible after the end of each term or semester.

(9) If an eligible individual does not maintain the standards of this section, the counselor shall:

(a) Terminate services at the institution of higher education; and

(b) Simultaneously notify the individual of the appeal procedure available under 782 KAR 1:040.

(10) Services terminated under subsection (9) of this section, may be reinstituted if the eligible individual:

(a) Successfully appeals the counselor's decision, in accordance with 782 KAR 1:040; or

(b) Subsequently meets the standard under which services were terminated. [The counselor shall terminate services at an institution of higher education for an eligible individual who does not maintain the standards of subsections (5), (6), (7) and (8) of this section, and shall simultaneously notify the eligible individual of appeal procedures available under 782 KAR 1:040.

(10) Services terminated under subsection (9) of this section, may be reinstituted if the outcome of the eligible individual's appeal of the counselor's decision through administrative regulation 782 KAR 1:040 so directs or if the eligible individual meets the standard under which services were terminated through his own initiative.]

Section 4. On-the-job-training. On-the-job-training provided in private or public employment other than within the department shall be subject to the following conditions:

(1) The eligible individual shall receive at least minimum wage;

(2) The employer shall provide to the eligible individual the same benefits and privileges that accrue to another employee.

(3) Prior to training, a written agreement shall be:

(a) Completed by the counselor, describing the goals and objectives of the training, including:

1. The length of training;

2. The skills taught;

3. Wages earned; and

4. An understanding that the eligible individual shall be hired permanently after successful completion of the training program.

(b) Signed by the:

1. Department; and

2. Employer.

(4) The eligible individual shall strive to make satisfactory progress in the training. The employer shall provide training reports to the department documenting the satisfactory or unsatisfactory progress of the eligible individual. [The employer shall be responsible for the provision of benefits and privileges that accrue to other employees;

(3) Prior to the training, a written agreement shall be completed by the counselor between the department and the employer giving a description of goals and objectives of the training, including, the length of training, the skills taught, wages earned and an understanding that the eligible individual shall be hired as a permanent employee after successful completion of the training program;

(4) The eligible individual shall make satisfactory progress as documented by training reports provided by the employer; and]

(5) The agreement for on-the-job training may be terminated by the department, the employer, or the eligible individual if the conditions of this section are not met.

Section 5. Work Experience and [f] Work Adjustment. A program [Programs] of work experience in private or public employment other than within the department shall be provided according to the following conditions:

(1) The individual shall not be sponsored for a period exceeding 520 total hours of work experience.

(2) A written agreement shall be completed by the counselor and signed by the department and employer or provider of services to designate:

(a) The length of the work experience;

(b) The number of hours to be worked each week;

(c) The payment that the individual shall receive; and

(d) Any payment to the provider by the department. [The individual may be sponsored for a period not to exceed 520 total hours of work experience;

(2) A written agreement shall be completed by the counselor between the department and the employer or provider of services to designate the length of the work experience, the number of hours to be worked each week, and payment that the individual will receive, and any payment to the provider by the department;]

(3) The employer or provider shall [must] monitor the performance of the individual in work experience and make periodic reports to the counselor; and

(4) The work experience contract may be terminated by the department at anytime if it is determined that the work experience is not beneficial to the individual.

Section 6. Physical and Mental Restoration. (1) An applicant or eligible individual shall be free to make their own choice as to a specialist. The chosen specialist shall:

(a) Be qualified and licensed in accordance with:

1. State law; and

2. Administrative regulations:

(b) Skilled in a field appropriate to the applicant or eligible individual; and

(c) Agree to provide service in compliance with the law. [An applicant or eligible individual shall have freedom of choice of any specialist qualified and skilled in an appropriate field of restoration practice providing the specialist is licensed in accordance with state laws and administrative regulations and agrees to provide services according to established state laws and administrative regulations.]

(2) Restoration services shall not be provided outside the Commonwealth of Kentucky, unless:

(a) The service is provided in a nearby out-of-state area routinely used for the convenience of the department;

(b) The out-of-state service shall ~~may~~ be cost saving;

(c) The service is not provided in state; or

(d) The provision of an in-state service would delay service to an eligible individual at extreme medical risk.

Section 7. Maintenance. (1) Maintenance shall not be provided unless ~~may be provided only when~~ necessary to support and derive the full benefit of other services being provided.

(2) Maintenance shall:

(a) Begin after other services have begun; and

(b) Cease thirty (30) days after the eligible individual has achieved suitable employment.

(3) The department shall not pay more for an eligible individual's room and board at an institution of higher education than the highest rate at an in-state public institution. [Maintenance may begin at any time after other services have begun, but shall cease thirty (30) days after the eligible individual has achieved suitable employment.]

(3) The amount the department may pay for room and board for an eligible individual enrolled in an institution of higher education shall not exceed the highest rate for campus residence room and board charged by an in-state public institution.]

(4) The cost of lodging and meals provided in support of services other than at an institution of higher education shall not exceed the per diem rate established for a state employee in Section 6 of 200 KAR 2:006. [Room and board shall not be provided for an eligible individual who attends an institution of higher education in the home community of the eligible individual, unless:

(a) Transportation is not available; or

(b) The cost of transportation exceeds the rate of on-campus residence and board at the institution.

(5) [Lodging and meals provided in support of services other than at an institution of higher education shall be limited in cost to:

(a) For a period less than thirty (30) days may not exceed the per diem rates established for state employees by the Kentucky Finance and Administration Cabinet; and

(b) For a period more than thirty (30) days may not exceed the written rates of payment established by the department.]

(5) [(6)] An eligible individual shall clearly designate a maintenance expense. The department shall not provided for maintenance identified only as personal expenses or miscellaneous expenses.

Section 8. Transportation. Transportation for an eligible individual shall be paid in accordance with the following:

(1) [Public] Transportation by a public common carrier shall be in the most economical means available ~~[at a cost that is economically most prudent and feasible to the department]~~.

(2) Private transportation by private vehicle shall be at the mileage rate established for state employees by the Kentucky Finance and Administration Cabinet.

(3) Lodging and meals necessary during travel shall not exceed the per diem rates established for state employees by the Kentucky Finance and Administration Cabinet.

(4) The total cost of transportation allowed for commuting between home and campus for an eligible individual who attends an institution of higher education shall not exceed the rate of on-campus residence and board at the institution.

(5) Transportation for an eligible individual who resides on campus at an institution of higher education shall be limited annually to six (6) round trips between the eligible individual's home and the campus.

(6) Transportation may include relocation and moving expenses if ~~when~~ necessary for an eligible individual to achieve placement in employment.

Section 9. Interpreter Services. Interpreter services shall be provided:

(1) If sign language is a necessary means of communication for the individual; and

(2) In conjunction with other services.

Section 10. Reader Services. Reader services shall be provided for a blind individual if:

(1) Recordings of printed materials are not readily available through the volunteer recording services of the department; and

(2) In conjunction with other services. [Interpreter Services. Interpreter services may be provided only in conjunction with other services and only if sign language is a necessary means of communication for the individual.]

Section 10. Reader Services. Reader services may be provided for individuals who are blind only in conjunction with other services and only when recordings of printed materials are not readily available through the volunteer recording services of the department.]

Section 11. Assistive Technology. (1) Assistive technology having the capacity to improve low vision shall be provided by an individual licensed to:

(a) Make an individual prescription; and

(b) Perform an individual fitting. [Assistive technology that has the capacity to improve low vision shall be provided by individualized prescriptions and fittings performing by individuals licensed to fill such prescriptions and licensed to perform such fittings.]

(2) Assistive technology may be provided if ~~only when~~ there is evidence that the eligible individual has the ability and capacity to successfully use assistive technology.

(3) Unusual or expensive assistive technology may be provided to an individual if use of a traditional aid or device is not feasible.

(4) An eligible individual shall return assistive technology to the department if it becomes unnecessary for the purpose for which it was provided.

(5) Assistive technology shall be:

(a) Provided in a new or like new condition; and

(b) Repaired or replaced by the department if, during the course of the written rehabilitation program, it becomes:

1. Defective;

2. Worn out; or

3. Obsolete.

(6) Unless involved in a postemployment service, it shall be the responsibility of the eligible individual to repair or replace defective, worn out, or obsolete assistive technology after rehabilitation.

Section 12. Self-employment. The department may participate in a self-employment program for a client if:

(1) The eligible individual and proposed self-employment enterprise undergo a feasibility evaluation;

(2) The eligible individual:

(a) Obtains the required:

1. License;
2. Permit;
3. Certificate; or
4. Lease; and

(b) Operates the enterprise in conformity with federal, state, and local statutes and regulations.

(3) The department has the option to review the proposed recordkeeping system:

- (a) Prior to establishment of the enterprise; and
- (b) Periodically for up to five (5) years; and

(4) The department's financial participation in the enterprise does not exceed \$5,000. If it appears that the department will recover its cost of participation from another source, this amount may be exceeded. [Exotic and expensive assistive technology may be provided only after it has been determined that less expensive and more traditional aids and devices for the eligible individual are not feasible.]

(4) Should it be determined that assistive technology is no longer needed for the purpose for which it is provided, the eligible individual shall be responsible to return such to the department.

(5) Assistive technology shall be provided in a new or like new condition, and if such becomes defective, worn out, or obsolete during the course of an eligible individual's individualized written rehabilitation program, it shall be repaired or replaced by the department.

(6) After an eligible individual has been determined to be rehabilitated, the eligible individual shall have the responsibility to repair or replace defective, worn out or obsolete assistive technology unless such repair or replacement is allowable under postemployment services.

Section 12. Self-employment. Subject to the following conditions, the department may participate in a program of self-employment for a client:

(1) The eligible individual, and the proposed self-employment enterprise, shall undergo appropriate and significant evaluation to determine the feasibility of the enterprise and the eligible individual's abilities and capacities to successfully manage the enterprise of self-employment;

(2) The eligible individual shall obtain the required licenses, permits, certificates, and leases, and in all instances operate the enterprise by in conformity with all federal, state, and local laws and regulations, including Wages and Hour Laws, Civil Rights Act of 1964 as amended, and Occupational Safety and Health Act Standards, as amended;

(3) The department shall have the option to review the proposed recordkeeping system prior to the establishment of the enterprise and periodically for a period not to exceed five (5) years; and

(4) The department's financial participation in a self-employment enterprise for an eligible individual shall not exceed \$5,000, unless there is a strong likelihood that the department may recover the cost of its participation from another source;]

Section 13. Tools and Equipment. The department shall recover tools, equipment, and supplies provided for employment if their use by the eligible individual ceases. [that have been provided to an eligible individual will be recovered by the department if the eligible individual ceases to use such for the pursuit and practice for which they were provided.]

Section 14. Recordings of Printed Materials. [{+}] Cassette recording of textbooks and other vocational materials shall be made available through the department's volunteer recording program.

[(2) An eligible individual requesting recorded materials from the volunteer recording program of the department shall also make application and use as a primary resource:

- (a) "Recordings for the blind;" and
- (b) "The Kentucky Library Services for the Blind and Physically

Handicapped," the Regional Program of the Library of Congress.]

Section 15. Comparable Benefits. (1) If an eligible individual is provided training services at an institution of higher education, he [the eligible individual] shall annually apply for comparable benefits [made] available through the financial aid office of the institution.

(2) The department shall maintain a cooperative agreement for improved coordination of comparable benefits for an eligible individual enrolled in an institution of higher education with the:

(a) Kentucky Association of Student Financial Aid Administrators; and

(b) Kentucky Higher Education Assistance Authority.

(3) Grant assistance, including a gift, endowment, or scholarship provided for a client enrolled in an institution of higher education, shall be considered a comparable benefit.

(4) The following forms of financial assistance shall not be considered a comparable benefit for an eligible individual enrolled at an institution of higher education:

(a) A guaranteed student loan;

(b) A national direct or student loan;

(c) A work study payment;

(d) Other aid termed as self-help;

(e) An unrestricted monetary award from a civic, professional, or social organization.

(5) The department shall:

(a) Determine the need and cost of service for an eligible individual from:

1. Federal law; and

2. State law and administrative regulations.

(b) Not be bound by a determination of need and cost of service made by a financial aid office of an institution of higher education.

(6)(a) Comparable benefits awarded for purposes of higher education shall be applied to the services designated by the granting authority.

(b) If there is not a clear designation, the award shall be pro-rated by percentage to pay in part for the expense of:

1. Tuition and fees;

2. Books and supplies;

3. Room and board;

4. Personal expenses; and

5. Transportation.

(c) The percentage used for distribution shall be the amount of the award divided by the total expenses listed in paragraph (b) of this subsection. [The department shall maintain cooperative agreements with the Kentucky Association of Student Financial Aid Administrators and the Kentucky Higher Education Assistance Authority for improved coordination of comparable benefits for eligible individuals who are enrolled in institutions of higher education.]

(3) Grant assistance, meaning gifts, endowments, or scholarships (but not student assistance under subsection (4) of this section) provided as financial assistance for clients who are enrolled in institutions of higher education, shall be considered comparable benefits.

(4) Guaranteed student loans, national direct or student loans, work study payments, other aid termed self-help, and unrestricted monetary awards from a civic, professional or social organization provided as financial assistance for eligible individuals who are enrolled in institutions of higher education shall not be considered as comparable benefits.

(5) The department shall not be bound by any determination of an eligible individual's need of service or the cost of service as identified by the financial aid office of an institution of higher education, but rather shall determine such need and the allowable cost of services according to the Rehabilitation Act and state laws and administrative regulations.

(6) Comparable benefits awarded for purposes of higher educa-

~~tion shall be applied for the services designated by the granting authority. Where there is no clear designation, such as in the case of a Pell grant, the award shall be prorated by percentage to pay in part for each expense of tuition and fees, books and supplies, room and board, personal expenses, and transportation that was used as the basis of the award. The percentage used for distribution shall be the amount of the award divided by the total of all expenses for tuition and fees, books and supplies, room and board, personal expenses, and transportation that was used as the basis of the award.]~~

Section 16. Participation of Individual in the Costs of Services. (1) The financial need of an individual with a disability shall not be considered by the department in the provision of services.

(2) An individual determined to be eligible for services shall be asked to voluntarily participate to help pay the costs of the individualized written rehabilitation program.

(3) Services shall not be denied to an individual who:

(a) Does not have available resources; or

(b) Refuses to participate. [There is no requirement by the department that the financial need of an individual with a disability be considered in the provision of services. However, each individual who is determined to be eligible for services shall be asked to voluntarily participate to help pay the costs associated with the individualized written rehabilitation program. No services shall be denied to an individual who does not have the available resources or who refuses to participate.]

Section 17. Purchase of Services. (1) ~~The department shall establish and maintain written rates of payment for all purchased services.~~

(2) ~~The cost of any services may not exceed the written rates of payment established by the department. An individual who wishes a service in excess of the established rates of payment shall pay any excess cost.~~

(3) ~~Services purchased by the department shall be made by written authorization of a counselor or other designated staff either before or at the same time as the purchase of services.~~

(4) ~~In an emergency situation, a counselor or other designated staff may make an oral authorization to purchase services but there must be prompt documentation and the authorization shall be confirmed in writing and forwarded to the provider of the services.~~

(5) ~~Any vendor providing services authorized by the department shall agree not to make any charge to or accept any payment from an applicant or eligible individual unless the amount of the charge or payment is previously known and approved by the department.]~~

Section 17. [48.] Emergency Denial of Services. The department may immediately suspend or terminate [any] services provided to an individual if during the course of those services the conduct of the individual poses a threat to personal safety or the safety of others.

Section 18. [49.] Order of Selection. (1) If the commissioner determines that the agency lacks available funds for all eligible individuals who apply for services, then the department shall follow an order of selection to give service priority according to a ranking of categories of eligible individuals based on the severity of disability as follows:

(a) Priority Category One shall include an eligible individual whose:

1. Impairment seriously limits four (4) or more functional capacities in terms of an employment outcome; and

2. Rehabilitation requires three (3) or more services.

(b) Priority Category Two shall include an eligible individual whose:

1. Impairment seriously limits three (3) or more functional capacities in terms of an employment outcome; and

2. Rehabilitation requires three (3) or more services.

(c) Priority Category Three shall include an eligible individual whose:

1. Impairment seriously limits two (2) or more functional capacities in terms of an employment outcome; and

2. Rehabilitation requires two (2) or more services.

(d) Priority Category Four shall include an eligible individual whose:

1. Impairment seriously limits one (1) or more functional capacities in terms of an employment outcome; and

2. Rehabilitation requires two (2) or more services. [Priority Category One: means an eligible individual whose impairment seriously limits four (4) or more functional capacities in terms of an employment outcome and whose rehabilitation requires three (3) or more services.]

(b) Priority Category Two: Eligible individuals whose impairment seriously limits three (3) or more of functional capacities in terms of employment outcome and whose rehabilitation requires three (3) or more services;

(c) Priority Category Three: Eligible individuals whose impairment seriously limits two (2) or more functional capacities in terms of an employment outcome and whose rehabilitation requires two (2) or more services;

(d) Priority Category Four: Eligible individuals whose impairment seriously limits one (1) or more functional capacities in terms of an employment outcome and whose rehabilitation requires two (2) or more services; and]

(e) Priority Category Five: All other eligible individuals.

(2) Priority for services shall be given to an eligible individual with a more serious impairment.

(3) The order of selection shall be implemented on a statewide basis.

(4) An eligible individual who is a public safety officer, as defined in Section 7(12) of 20 USC 701, shall receive priority for services with each priority category.

(5) The department shall conduct an assessment to determine an individual's:

(a) Eligibility for vocational rehabilitation services; and

(b) Priority under the order of selections.

[3] Eligible individuals who are public safety officers as defined in Section 7(12) of the Rehabilitation Act of 1973, as amended, will receive priority for services within each priority category.

(4) The department shall conduct an assessment to determine whether an individual is eligible for vocational rehabilitation services and the individual's priority under the order of selection.]

(6) ~~[(5)]~~ The order of selection shall not apply to the following:

(a) The acceptance of a:

1. Referral; and

2. Applicant. [referrals and applicants];

(b) The provision of assessment services to determine an individual's:

1. Eligibility for vocational rehabilitation services; and

2. Priority under the order of selection.

(c) An eligible individual who is in the process of receiving services at the effective date of the order of selection. [The provision of assessment services to determine whether an individual is eligible for vocational rehabilitation services and the individual's priority under the order of selection; and

(e) Services needed by any eligible individual who has begun to receive services prior to the effective date of the order of selection.]

[(6)] The commissioner of the department shall direct the order of selection by designating in written memorandum the priority categories to be served.]

(7) An eligible individual shall be immediately reclassified into a higher priority category if their level of impairment increases and is documented. [whenever appropriate justification exists in the case record of the individual.]

(8) In the order of selection, an eligible individual in a closed

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priority category shall be placed on a waiting list until the priority category is reopened. ~~[In the order of selection each eligible individual within a closed priority category shall be placed on a waiting list until such time as the priority category is opened.]~~

DENISE PLACIDO, Commissioner

RODNEY CAIN, Secretary

APPROVED BY AGENCY: January 21, 1997

FILED WITH LRC: January 21, 1997 at 11 am.

PUBLIC PROTECTION AND REGULATION CABINET Department of Alcoholic Beverage Control (As Amended)

804 KAR 4:340. Brew-on-premises license.

RELATES TO: KRS 243.040(11)

STATUTORY AUTHORITY: KRS 241.060(1), 243.040(11)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1)

authorizes the Alcoholic Beverage Control Board to create special licenses the board may find necessary for the proper regulation and control of trafficking in malt beverages. This administrative regulation establishes a new malt beverage license entitled "Brew-on-premises" license.

Section 1. Definitions. (1) "Brew-on-premises establishment" means an establishment that has been granted a license pursuant to the provisions of this administrative regulation to provide ingredients, equipment, and assistance permitted by this administrative regulation to a customer to brew malt beverages on the premises of the establishment.

(2) "Customer" means a person at least twenty-one (21) years old.

Section 2. A "Brew-on-premises" license shall be granted if an applicant meets the provisions of this administrative regulation. The "Brew-on-premises" licensee shall not be considered a brewer, wholesaler, or retailer of malt beverages, if the licensee complies with the provisions of this administrative regulation.

Section 3. A "Brew-on-premises" licensee may ~~shall~~ be authorized to provide:

(1) Instruction, advice, expertise, space, equipment, ingredients, and bottling supplies for a customer in brewing malt beverages at the licensed premises.

(2) Assistance to customers, including:

(a) Moving containers of beer between storage areas;
(b) Cleaning, maintaining, and repairing brewing and bottling equipment;

(c) Maintaining climate and temperature control;

(d) Disposing of spent grains and waste; and

(e) Quality control, including laboratory analysis of malt beverages.

(3) Filtering and carbonation of malt beverages.

Section 4. A licensee and his employees shall not provide physical assistance to, or on behalf of, the customer in the production or bottling of malt beverages, except as otherwise permitted by statute or administrative regulation.

Section 5. Malt beverages produced under this license shall:

(1) Be removed from the premises by the customer upon completion of bottling for personal or family use, including use in organized fairs, exhibitions, or competitions; and

(2) Not be sold or offered for sale by the customer.

Section 6. A customer may produce malt beverages for personal or household use on the premises of the brew-on-premises license. The production of malt beverages per household shall not exceed:

(1) 100 gallons per year for a household ~~[households]~~ with one (1) adult at least twenty-one (21) years of age in permanent residence ~~[resident]~~; or

(2) 200 gallons per year for a household ~~[households]~~ with two (2) or more adults at least twenty-one (21) years of age in permanent residence.

Section 7. A license issued pursuant to this administrative regulation shall not be:

(1) A quota license as defined in 804 KAR 9:010; and

(2) Transferrable to another premises. ~~[The license issued hereunder shall not be a quota license as defined in 804 KAR 9:010 and is not transferable to other premises.]~~

Section 8. A "Brew-on-premises" establishment shall not be located in a dry territory as defined in KRS 242.010(2).

Section 9. (1) The license fee for the brew-on-premises license shall be \$500 per annum, and the fee shall be prorated as set forth in KRS 243.090(2). A license ~~[Licensee]~~ shall expire at midnight on June 30 of each year.

(2) Upon renewal, the licensee shall submit a:

(a) Application form;

(b) Fee as established in subsection (1) of this section; and

(c) Report stating:

1. Number of customers that brewed malt beverages at the licensed establishment during the preceding year; and

2. Total number of gallons brewed during the preceding year.

Section 10. The "Brew-on-premises" licensee shall maintain records on customers and gallons brewed for at least two (2) years. Records shall be kept on the premises of the licensed establishment and shall be subject to inspection by the Department of Alcoholic Beverage Control for compliance with provisions of this administrative regulation.

Section 11. The hearing process for a violation ~~[violations]~~ of this administrative regulation shall be controlled by ~~[is set forth in]~~ KRS Chapter 13B.

Section 12. (1) ABC-750, an "Application for a Brew-on-premises License", Department of Alcoholic Beverage Control, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Department of Alcoholic Beverage Control, 1003 Twilight Trail, Suite A-2, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LAURA DOUGLAS, Secretary

RICHARD JOHNSTONE, Commissioner

APPROVED BY AGENCY: April 15, 1997

FILED WITH LRC: April 15, 1997 at 11 am.

PUBLIC PROTECTION AND REGULATION CABINET Department of Mines and Minerals Division of Oil and Gas (As Amended)

805 KAR 1:160. Posting of a danger sign on a facility used for the storage of oil.

RELATES TO: KRS 353.500, 353.656

STATUTORY AUTHORITY: KRS 353.540(1) ~~[353.500, 353.540, 353.656]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 353.656 requires a well operator to display a sign printed with the word "Danger" and other information specified by the department near or on a facility used for storage of oil, whether it is in active production or has been abandoned. This administrative regulation specifies the size, wording, coloration, and placement of the sign.

Section 1. Definitions. ~~[In addition to those set out in KRS 353.510, the following definitions shall apply to this administrative regulation:]~~

(1) "NFPA" means the National Fire Protection Association.

(2) "Tank battery" means a single storage tank or group of storage tanks that are interconnected or are less than three (3) feet apart, where oil is collected from a wellhead.

Section 2. (1) An operator ~~or owner~~ shall display a printed sign on each tank battery, whether it is in active production or has been abandoned.

(2) Each sign shall ~~[at a minimum]~~ contain the following words ~~[word]~~ and phrases:

- (a) "Danger";
- (b) "No smoking or open flame";
- (c) "Extremely flammable liquid and vapor";
- (d) "May cause flash fire";
- (e) "No trespassing"; and
- (f) "Petroleum crude oil".

(3) Symbol. A no smoking symbol with a cigarette crossed through shall be displayed on each side of the words "no smoking or open flame".

Section 3. (1) The sign shall use the numbering system described in NFPA 704 "Standard System for the Identification of the Fire Hazards of Materials," which provides a classification and marking system for identification of a fire hazard.

(2) A facility used for the storage of oil shall have a "health hazards" ranking of "1" identified by:

(a) A black "1" at the nine (9) o'clock position in a blue square located in a square-on-point field; or

(b) A blue "1" at the nine (9) o'clock position without the colored square.

(3) A facility used for the storage of oil shall have a "flammability hazards" ranking of "3" identified by:

(a) A black "3" at the twelve (12) o'clock position in a red square located in a square-on-point field; or

(b) A red "3" at the twelve (12) o'clock position without the colored square.

(4) A facility used for the storage of oil shall have a "reactivity hazards" ranking of "0" identified by:

(a) A black "0" at the three (3) o'clock position in a yellow square located in a square-on-point field; or

(b) A yellow "0" at the three (3) o'clock position without the colored square. ~~[The sign shall also use the numbering system set out in the NFPA Edition 704, entitled "Standard System for the Identification of the Fire Hazards of Materials", which has a classification and marking system for identification of the fire hazards of certain materials, including petroleum crude oil. Under this system, the following classifications of petroleum crude oil are subject to the numbers and colors indicated:~~

~~(2) A "health hazards" ranking of "1" shall be identified by a black "1" in a blue square located in a square-on-point field at the nine (9) o'clock position, or the number may be colored blue at the nine (9) o'clock position without the colored square.~~

~~(3) A "flammability hazards" ranking of "3" shall be identified by a black "3" in a red square located in a square-on-point field at the twelve (12) o'clock position, or the number may be colored red in the twelve (12) o'clock position without the colored square.~~

~~(4) A "reactivity hazards" ranking of "0" shall be identified by a~~

~~black "0" in a yellow square located in a square-on-point field at the three (3) o'clock position, or the number may be colored yellow in the three (3) o'clock position.]~~

Section 4. Dimensions and Coloration of the Sign. (1) A sign shall not be smaller than:

(a) Seventeen (17) inches in height; and

(b) Twenty-eight (28) inches in width.

(2) The letter size for the required wording shall be as follows:

(a) The word "danger" shall:

1. Be in uniformly sized letters; and

2. Not be less than three (3) inches in height;

(b) The words "no smoking or open flame" shall:

1. Be in uniformly sized letters; and

2. Not be less than one (1) inch in height; and

(c) The words set out in Section 2(2)(c) through (f) of this administrative regulation shall:

1. Be in uniformly sized letters; and

2. Not be less than one-half (1/2) inch in height.

(3) The "no smoking" symbol with a cigarette crossed through shall not be less than one and one-half (1 1/2) inches in height.

(4) The NFPA numbers shall not be less than one-half (1/2) inch in height.

(5) The background color of the sign shall contrast with the foreground color of the letters and the NFPA numbers to make them clearly visible (e.g., white background with black letters).

Section 5. (1) There shall be one (1) sign per:

(a) Tank battery; or

(b) Tank, if the individual tanks in a battery are controlled by more than one (1) operator.

(2) A sign shall be:

(a) Displayed at:

1. Least five (5) feet from the ground; and

2. The most visible location from the approach;

(b) Properly maintained; and

(c) Replaced if it is:

1. Illegible;

2. Damaged;

3. Vandalized; or

4. Stolen. ~~[The sign shall be no smaller than seventeen (17) {twenty-eight (28)} inches in height and twenty-eight (28) {seventeen (17)} inches in width.~~

~~(2) The letter size for a sign's required wording shall be as follows:~~

~~(a) The word "danger" shall be in uniformly sized letters not less than three (3) inches [nor more than four (4) inches] in height;~~

~~(b) The words "no smoking or open flame" shall be in uniformly sized letters not less than one (1) inch [nor more than one and one-half (1 1/2) inches] in height; and~~

~~(c) The words set out in Section 2(2)(c) through (f) of this administrative regulation shall be in uniformly sized letters not less than one-half (1/2) inch [nor more than one (1) inch] in height.~~

~~(3) The no smoking symbol with a cigarette crossed through shall be not less than one and one-half (1 1/2) inches [nor more than three (3) inches] in height.~~

~~(4) The NFPA numbers shall be not less than one-half (1/2) inch [nor more than one (1) inch] in height.~~

~~(5) The background color of the sign shall contrast with the foreground color of the letters and the NFPA numbers to make them clearly visible (e.g., white background and black letters).~~

Section 5. There shall be a minimum of one (1) sign per tank battery unless individual tanks are controlled by more than one (1) operator, in which case a sign is required for each tank. A sign shall

~~be displayed a minimum of five (5) feet off the ground, at the most visible location from approach, and shall be maintained in proper condition and replaced when it is no longer readable, is damaged, vandalized or if it is stolen.]~~

Section 6. Signs in Existence Prior to this Administrative Regulation. (1) A danger sign posted on a tank or tank battery prior to promulgation of this administrative regulation may be retained by an operator if:

(a) He files a written petition for a waiver seeking permission to retain the noncomplying sign; and

(b) The prior sign is clearly displayed:

1. On the tank or tank battery; and

2. At the most visible location from approach;

(2) A prior noncomplying danger sign shall be replaced with a sign that complies with this administrative regulation if it is:

(a) Illegible;

(b) Damaged;

(c) Vandalized; or

(c) Stolen. ~~[An operator having a danger sign posted on a tank or tank battery prior to the effective date of this administrative regulation may keep the existing sign posted under the following conditions:~~

~~(1) The operator shall petition the director in writing for a waiver to use a sign which is designed in a manner other than that required in this administrative regulation.~~

~~(2) Each sign shall be clearly displayed on each tank or tank battery at the most visible location from approach.~~

~~(3) [The existing sign shall not be painted on the tank.~~

~~(4) Each danger sign shall be replaced with the sign described in this administrative regulation when it is no longer readable, is damaged, vandalized or if it is stolen.]~~

Section 7. Violations for Failure to Post a Sign. (1) Upon locating a tank or tank battery without a danger sign, the inspector shall issue a notice of noncompliance to the last known operator.

(2) The notice of noncompliance shall be mailed to the operator by certified mail, return receipt requested. If the violation is not corrected by the posting of a proper sign within forty-five (45) days of his receipt of the notice of noncompliance, the operator shall be subject to the penalties set out in KRS 353.991.

Section 8. Material Incorporated by Reference. (1) The following material is incorporated by reference: NFPA Edition 704, "Standard System for the Identification of Fire Hazards of Materials", 1990 edition, Chapters 1-4 and Figure 6.1.

(2) This material may be examined or copied at the Kentucky Department of Mines and Minerals, 3572 Ironworks Pike, Lexington, Kentucky 40512, Monday through Friday, 8 a.m. to 4:30 p.m.

LAURA M. DOUGLAS, Secretary

JOHN L. FRANKLIN, Commissioner

APPROVED BY AGENCY: May 14, 1997

FILED WITH LRC: May 15, 1997 at 11 a.m.

PUBLIC PROTECTION AND REGULATION

Department of Mines and Minerals

Division of Oil and Gas

(As Amended)

805 KAR 1:170. Content of the operations and reclamation proposal; form on which the proposal is filed.

RELATES TO: KRS 353.520, 353.570, 353.590, 353.5901, 353.595, 353.597

STATUTORY AUTHORITY: KRS 353.540, 353.550, 353.5901, 353.670

NECESSITY, FUNCTION, AND CONFORMITY: KRS 353.5901(1) requires a well operator to submit to the Department of Mines and Minerals an operations and reclamation proposal applicable to all tracts on which there has been a complete severance of the ownership of the oil and gas from the ownership of the surface to be disturbed. This administrative regulation specifies the content of the operations and reclamation proposal, creates the form on which that proposal is to be filed, and provides for the form on which well transfers are indicated.

Section 1. Definitions. In addition to those set out in KRS 353.510, the following definitions shall apply to this administrative regulation:

(1) "Cross drain" means an open ditch, constructed across the roadway, to carry off road surface water and which is not intended to replace culverts or prohibit vehicular traffic.

(2) "Diversion ditch" means a channel or ridge constructed across a slope for diverting surface runoff.

(3) "Filter strip" means a natural vegetative strip, left undisturbed, between the disturbed construction area and a water course, and which acts as a buffer area to catch sediment before it enters the water course.

(4) "Final reclamation" means the date on which the operator has completed his drilling operations at the well site, has plugged the well and has performed all obligations described in the operations and reclamation proposal.

~~[(5) "Surface owner" means the person in whose name title to the surface of the land subject to disturbance by drilling operations is recorded and who is assessed property taxes by the property valuation administrator of the county where the land is located.]~~

Section 2. (1) The operations and reclamation proposal shall be filed on Form ED-10~~[-effective February 14, 1997]~~, entitled "Plan to Prevent Erosion of and Sedimentation from a Well Site".

(2) In addition to the requirements set out in KRS 353.5901, the following information shall be set out on Form ED-10:

(a) The operator's and surface owner's names, addresses and telephone numbers, the county in which the well is proposed to be drilled, and the well number;

(b) A listing or description of fertilizers and soil amendments and seed or trees to be planted for each affected area requiring revegetation treatment and the types and amounts per acre of seed and trees to be planted; and

(c) A detailed drawing of the road, well location and proposed area of disturbance, which shall be in sufficient detail to allow ready identification of surface features and which shall satisfy the following requirements:

1. The surface owner's tract(s) shall be identified on the drawing, with the name of the surface owner if not listed on the legend, which drawing shall also indicate the acreage to be disturbed;

2. The drawing may be made over an enlarged section of the United States Geological Survey (USGS) 1:24000 topographic map and may be enlarged to approximately 1"=400' and be submitted on an eight and one-half (8 1/2) inch by fourteen (14) inches sheet, using the symbols set out on Form ED-10.

3. The drawing shall have a legend with the operator's and surface owner's names not listed on the map, the scale of the map, the well name and number, and the lease name.

(3) Signatory sections for the operator and surface owner shall be completed on Form ED-10 in the following manner:

(a) The name and title, if any, of the operator shall be indicated and his signature notarized, which signature shall be either that of an officer of the company or of some other person who holds a duly recorded power of attorney to execute documents, a copy of which power of attorney shall be filed with the division. If the prospective operator is an individual, the signatory shall be in the same name as the applicant's or a power of attorney to execute documents shall be

submitted to the division if the signatory is someone other than the applicant;

(b) The surface owner's name shall be indicated and his signature notarized if he approves of the operations and reclamation proposal, together with any attachments submitted with it.

Section 3. Unsigned Reclamation Forms. If the owner of the surface of the severed minerals tract is unwilling or for some other reason has failed to execute Form ED-10, the operator shall file a written petition for mediation, together with the following, at the time the application for permit is filed, in accordance with KRS 353.5901:

(1) A copy of the certified mail receipt verifying that the operations and reclamation proposal, the statement required in KRS 353.5901(2)(b), and the plat were mailed to and received by the surface owner or, if not received, the original or a copy of the unclaimed envelope. A copy of the operations and reclamation proposal and the attachments enclosed in the envelope mailed to the surface owner shall also be included.

(2) If the surface owner cannot be reached at his last known address of record and certified mail is returned as undeliverable or unknown, the operator shall publish a notice of intended activity, together with a request for information on the whereabouts of the surface owner, which publication shall be made two (2) consecutive times in a local newspaper in the county where the proposed well is located and once in a newspaper of general circulation ~~[with state-wide distribution]~~. A copy of the notice of intended activity and request for surface owner information shall be included when the operator files his application for permit and shall include:

(a) The name and address of the operator;

(b) A brief description of the intended activity as set out in the operations and reclamation proposal;

(c) The ~~[date upon which the]~~ surface owner must respond to this notice within thirty (30) days of the first publication in the newspaper; and

(d) A statement of where interested persons may obtain additional information as to the operator's intended activity.

Section 4. Mediation of Dispute. (1) The surface owner may file with the division a request for mediation at any time after he has received from the operator the proposed operations and reclamation proposal, but only after the operator has filed his request for mediation and not later than the time set forth in the Notice of Request for Mediation provided by the department and mailed to the surface owner. The surface owner's request to participate in mediation shall include the mediation fee, in accordance with KRS 353.5901(2)(b).

(2) If the surface owner does not file his mediation fee within the time and in the manner required in the Notice of Request for Mediation, he shall be deemed to have failed to satisfy the statutory requirements applicable to mediation, the mediator shall file a report noting ~~the~~ ~~[such]~~ failure and recommend the acceptance of the operator's operations and reclamation proposal.

~~(3) [Upon his receipt of a request for mediation, proof of notification or attempted notification and copies of the published notice of intended activity, if required by Section 3 of this administrative regulation, and the mediation fee required in KRS 353.5901(4), the mediator shall issue an order scheduling mediation and send it by certified mail to the well operator and all surface owners of areas to be disturbed by drilling who have not agreed to the operations and reclamation proposal.]~~

~~(4)~~ The mediator ~~shall~~ ~~[may]~~ not settle damage claims or make any determinations regarding them in his report. However, information presented by the operator or surface owner as to ~~[such factors as]~~ costs incurred by either party as a result of the projected drilling and the loss of minerals or surface damage may be utilized by the mediator in recommending the placement of roads, pits or other construction and reclamation activities in a manner which has the least adverse surface impact.

~~(4) [(5)]~~ If the operator withdraws his application for a permit to drill, deepen, or reopen a well after receipt by the division of the surface owner's mediation fee, that fee shall be refunded to the surface owner.

Section 5. (1) The construction of the well site, including roads, pits, tanks, lines and other areas disturbed, shall be performed by the operator in accordance with the operations and reclamation proposal. All cuts and fills shall have side slopes that are stable for the soil or fill material involved. The vertical grades shall be as low as reasonably practicable and compatible with topography.

(2) If the well produces and the site is kept open for long-term use for well servicing and for oil and gas removal, the operator shall:

(a) Maintain access roads in ~~[such]~~ a manner as to allow access by the operator without causing unreasonable settlement of the roadbed or slides of the cut slopes, and provide that maintenance in accordance with the operations and reclamation proposal;

(b) Establish drainage to adequately accept runoff from access roads, the well site and other areas in a manner which prevents unreasonable interference with the surface owner's property, roads, farming operations, and buildings, and establish that drainage in accordance with the operations and reclamation proposal;

(c) Repair access roads, the well site area, and pits damaged by events ~~[such]~~ as floods, landslides, or excessive settlement of the embankment as soon as practicable after the damage has occurred; however, the operator shall not be responsible for damage attributable to another party's use of the access road not relating to the drilling, construction or operation of the well by the operator.

Section 6. (1) The operator shall provide written notice to the division when final reclamation and plugging have been completed.

(2) The bond required in KRS 353.590(5) shall not be released until a division inspector has made an inspection of the well site one (1) year after the date of the letter of notification from the operator of final reclamation and plugging and has filed a report to the director documenting that the following have occurred:

(a) All areas disturbed by the operator have been secured in a manner to prevent runoff, sedimentation, or settlement of the roadway, sliding of cut slopes or any fill material;

(b) A diverse and effective permanent vegetative cover has been established; and

(c) Any matters relating to settlement, inadequate vegetative cover or erosion have been corrected.

Section 7. Transfer of Wells having Existing Reclamation Plans.

(1) Prior to transferring a well located on a severed minerals tract and for which an approved operations and reclamation proposal is on file with the division, the operator shall:

(a) Provide the successor operator a copy of the approved reclamation forms and attachments on file with the division before ~~signing~~ Form ED-13, ~~[entitled]~~ "Well Transfer" ~~[-, revised on April 16, 1990, is signed];~~

(b) Advise the successor operator of any reclamation responsibility the transferring operator had with regard to the well and related surface disturbance;

(c) Secure from the successor operator a letter indicating he has received from the transferring operator a copy of Form ED-10 and that he is willing to accept responsibility for the reclamation of the well site and other surface disturbances related to the operation of the well;

(d) Submit to the division the executed Form ED-13, applicable fee, and the letter of the successor operator's agreement to accept responsibility for reclamation in the manner set forth on Form ED-10; and

(e) Provide the surface owner of record with a copy of form ED-13 when he submits it to the division.

(2) The division shall not transfer the well until the requirements

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of this section are satisfied and shall advise the transferring and successor operators in writing when the well is transferred.

Section 8. If a well is to be drilled and completed on federal lands, the director shall accept a copy of a surface use reclamation agreement between the well operator and the federal agency in lieu of the operations and reclamation proposal. If the operator elects to submit this agreement, it shall be submitted at the time of filing the application for permit to drill a well.

Section 9. (1) If a field inspection indicates there is noncompliance with the approved operations and reclamation proposal or the requirements of Section 6 of this administrative regulation, a written notice of violation describing the noncompliance shall be given to the operator, together with a statement of the action required to correct the noncompliance.

(2) The written notice of violation ~~shall~~ may allow the operator up to forty-five (45) days to correct the violation.

(3) An operator may file for an extension of time to correct a violation by submitting a letter to the director describing the need for that extension; if the director concludes that the request is reasonable and that an extension of time will not violate the requirements of this administrative regulation or applicable statutes, he may grant the request for extension of time.

(4) The operator's bond may be forfeited to the department's oil and gas well plugging fund, pursuant to KRS 353.590(7), if he fails to make required corrections.

(5) An operator who, after hearing, is determined by the department to be in noncompliance with any section of this administrative regulation, or who fails to abate any noncompliance of the approved operations and reclamation plan, is subject to the penalties described in KRS 353.991.

Section 10. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) Form ED-10, "Plan to Prevent Erosion of and Sedimentation from a Well Site", (February 14, 1997 Edition), Division of Oil and Gas; and

(b) Form ED-13, "Well Transfer", (April 16, 1990 Edition), Division of Oil and Gas. ~~[Forms ED-10 and ED-13 are incorporated by reference.]~~

(2) These forms may be obtained from, examined, or copied at the Kentucky Department of Mines and Minerals, 3572 Ironworks Pike, Lexington, Kentucky 40512, Monday through Friday, 8 a.m. to 4:30 p.m.

LAURA M. DOUGLAS, Secretary

JOHN L. FRANKLIN, Commissioner

APPROVED BY AGENCY: May 14, 1997

FILED WITH LRC: May 15, 1997 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET Department of Mines and Minerals Division of Oil and Gas (As Amended)

805 KAR 1:180. Production reporting.

RELATES TO: KRS 353.550(1)

STATUTORY AUTHORITY: KRS 353.540, 353.550(4) ~~[(3)]~~, 353.670(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 353.550(1) authorizes the department to promulgate administrative regulations requiring an operator of oil and gas properties in the Commonwealth to identify producing leases. This administrative regulation is necessary to specify the requirement of annual

reporting, the content of the report, and the form on which the report shall be made. ~~[KRS 353.550 provides the department with authority to require all operators of oil and gas properties in the Commonwealth to identify producing leases, submitted on the form on which production is required by the department to be reported. This administrative regulation specifies the content of the annual report of monthly production of natural gas and crude oil and creates the form on which that report is to be made.]~~

Section 1. Definitions. In addition to the definitions set out in KRS 353.510, the following definitions shall apply to this administrative regulation:

(1) "GPS" ~~means [refers to]~~ a global positioning satellite, which: (a) Receives radio frequencies from more than one (1) satellite; and

(b) is able to locate a point on the earth. ~~[is used to obtain a location of a point on the earth by using a receiver to triangulate the position from radio frequencies received from more than one (1) such satellite.]~~

(2) "Mcf" means 1,000 cubic feet of natural gas.

(3) "Net gas sales" means the amount of gas sold into the line of first purchase and may be different from produced gas, due to line loss and compressor usage.

(4) "Produced gas" means the amount of produced gas metered or prorated at the well head on a monthly basis.

(5) "Purchaser or lease number" means the number assigned by the purchasing company to the lease or well for accounting and payment purposes.

(6) "Topographic spot" means the act of locating a well on a United States Geological Survey 1:24,000 Topographic Map and scaling that well location on the map to determine its Carter Coordinate location.

Section 2. Annual Report of Monthly Production. (1) An oil or gas operator shall:

(a) Compile and retain records of the monthly production of natural gas and crude oil; and

(b) For the preceding year, file the production information with the Division by April 15.

(2) The information may be submitted to the division:

(a) On Form ED-17, "Annual Report of Monthly Production for Natural Gas and/or Crude Oil"; or

(b) By using:

1. Common personal computer spread sheet or database software;

2. An electronic mail attachment.

(3) An operator shall be permitted to submit the information in accordance with subsection (2)(b) of this section, subject to the division being able to process the production data electronically.

(4) The following shall be included in the information submitted by the operator: ~~[An oil or gas operator shall file production information on Form ED-17, entitled "Annual Report of Monthly Production for Natural Gas and/or Crude Oil". The operator shall file the following information by April 15 of each year for the preceding year on this form:]~~

(a) Operator name and address;

(b) Production year;

(c) Permit number issued by the Division of Oil and Gas;

(d) Purchaser number;

(e) Number of wells on the lease for which the report is being filed;

(f) Farm name, complete with the individual well name and well number;

(g) County of production;

(h) Producing formation or, if production is commingled from multiple wells which are not metered separately, the identification of

the wells as "commingled" and the pertinent formations from which production was made; and

(i) Well status, identified as producing or shut-in.

(5) ~~[(2)]~~ Production from a gas well shall be reported in Mcf of produced gas and net gas sales.

(6) ~~[(3)]~~ Monthly oil production shall be reported in barrels by individual well or by lease; if by lease, the operator shall attach to Form ED-17 a list identifying the purchaser number and division permit number of all wells producing on that lease.

(7) ~~[(4)]~~ For a well drilled prior to the date upon which a permit for the drilling and production of a well was statutorily required, the operator shall provide a Carter Coordinate location for each well not having a location on file with the division; that location may be estimated by a topographic spot, a GPS locator, or by survey.

~~[(5) The production reporting requirements of this administrative regulation may be satisfied by using personal computer spread sheet software or by an electronic mail attachment, subject to the division's being able to view the production data.]~~

Section 3. Penalties. If an operator does not file his production data on Form ED-17 by April 15 after each production year, the division shall notify him in writing of his noncompliance. If he does not submit all required production information within forty-five (45) days after being notified of his noncompliance, he shall be subject to the penalties established in KRS 353.991(2), (3) and (4).

Section 4. **Incorporation by Reference.** (1) "Annual Report of Monthly Production for Natural Gas and/or Crude Oil", (February 14, 1997 edition), Division of Oil and Gas, is incorporated by reference. ~~[Material Incorporated by Reference: (1) The following form is incorporated by reference: Form ED-17, effective 2/14/97.]~~

(2) This form may be obtained, examined, or copied at the Kentucky Department of Mines and Minerals, Division of Oil and Gas, 3572 Ironworks Pike, Lexington, Kentucky 40512, Monday through Friday, 8 a.m. to 4:30 p.m.

LAURA M. DOUGLAS, Secretary
JOHN L. FRANKLIN, Commissioner

APPROVED BY AGENCY: February 24, 1997

FILED WITH LRC: February 27, 1997 at 1 p.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(As Amended)

806 KAR 4:010. Fees of the Department of Insurance.

RELATES TO: KRS 18A.225, 304.4-010, 304.9-260, 304.11-020, 304.17A-095, 304.19-080, 304.32, 304.32-190, 304.39, 304.99-100 ~~[1994 Ky. Acts ch. 262, §4(4)]~~

STATUTORY AUTHORITY: KRS 304.2-110, 304.4-010~~[1994 Ky. Acts ch. 262, §4(4)]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of Insurance to promulgate ~~[adopt]~~ administrative regulations necessary to implement KRS Chapter 304 ~~[for or as an aid to the effectuation of any provision of the Kentucky Insurance Code]~~. KRS 304.4-010 requires the Commissioner of Insurance to prescribe those services for which fees shall be charged and the amounts of the fees. This administrative regulation prescribes the [these] services for which the Department of Insurance shall [will] charge fees and the amounts of those fees. ~~[Under 1994 Ky. Acts ch. 262, §4(4), an administrative agency shall charge fees based on costs for public records used for commercial purposes.]~~

Section 1. The commissioner shall collect in advance fees as follows:

- (1) Annual statement.
 - (a) Filing each year, \$150 ~~[\$100]~~.
 - (b) Filing additional or supplemental statement in the same year, \$100.
- (2) Filing charter documents.
 - (a) Original or certified copy of a charter document, bylaws, and records of organization~~[, or certified copies thereof]~~ required to be filed, \$100.
 - (b) Amended or certified copy of charter documents, bylaws, and records of organization~~[, or certified copies thereof]~~ required to be filed, \$50.
- (3) Certificate of authority or certificate of filing.
 - (a) Nonrefundable application fee, \$500.
 - (b) Issuance of original certificate, \$100 ~~[\$500]~~.
 - (c) ~~[(b)]~~ Amending, to add a line, \$100 ~~[\$50]~~.
 - (d) ~~[(e)]~~ Renewal, each year, \$200 ~~[\$100]~~.
- (4) Organization of domestic mutual insurers: filing application for solicitation permit and issuance of the ~~[such]~~ permit, \$200.
- (5) Self insurer.
 - (a) Application to become self insurer under subtitle 39, \$200.
 - (b) Notification of self-insurance program under subtitle 32, \$50.
- (6) Risk purchasing groups.
 - (a) Application and registration fee, \$250.
 - (b) Alterations and updates to currently registered purchasing groups, \$50.
- (7) Agent licenses, foreign and alien insurers.
 - (a) Agent license, per insurer represented, biennial, \$60 ~~[\$40]~~.
 - (b) Temporary license as agent, 50 ~~[\$20]~~.
 - (c) Nonresident agent, per insurer represented, biennial, \$70 ~~[\$50]~~.
 - (d) Resident corporate or partnership agent, per insurer represented, biennial, \$120 ~~[\$100]~~.
 - (e) Nonresident corporate or partnership agent, per insurer represented, biennial, \$140 ~~[\$120]~~.
- (8) ~~[(7)]~~ Surplus lines broker, reinsurance intermediary, or managing general agent, biennial, \$150 ~~[\$100]~~.
- (9) ~~[(8)]~~ Solicitor license, biennial, \$60 ~~[\$40]~~.
- (10) ~~[(9)]~~ Adjuster license, biennial, \$100 ~~[\$50]~~.
 - (a) Temporary license as apprentice adjuster, \$50 ~~[\$25]~~.
 - (b) Administrator's license, biennial, \$100 ~~[\$50]~~.
- (11) ~~[(10)]~~ Consultant license, biennial, \$150 ~~[\$100]~~.
- (12) ~~[(11)]~~ Agent licenses for risk retention agents, fraternal benefit societies, subtitle 32 corporations, health maintenance organizations, prepaid dental plan organizations, per fraternal benefit society, subtitle 32 corporation, health maintenance organization, or prepaid dental plan represented, biennial.
 - (a) Residents, \$60 ~~[\$40]~~.
 - (b) Nonresidents, \$70 ~~[\$50]~~.
- (13) ~~[(12)]~~ Filing agent and solicitor continuing education courses for:
 - (a) Approval, \$5 per hour of continuing education credit; minimum of \$10, maximum of \$300.
 - (b) Biennial renewal, \$5 per hour of continuing education credit; minimum of \$10, maximum of \$150.
- (14) ~~[(13)]~~ Late renewal of agent licenses pursuant to KRS 304.9-260, 304.32-190, 806 KAR 38:020, 806 KAR 43:010, and KRS 304.99-100, per insurer, subtitle 32 corporation, health maintenance organization, or prepaid dental plan organization represented.
 - (a) Residents, \$60 ~~[\$40]~~.
 - (b) Nonresidents, \$70 ~~[\$50]~~.
- (15) ~~[(14)]~~ Examination for or in connection with licensing of agents, solicitors, adjusters, and consultants, \$75 ~~[\$50]~~.
- (16) ~~[(15)]~~ Annual registration fee of unauthorized insurer under KRS 304.11-020(2), \$500.
- (17) ~~[(16)]~~ Advisory organizations.
 - (a) Application for license, \$500.
 - (b) Annual renewal, \$100.

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(18) [(47)] Rate and form filings.

(a) Rate level revision filing in a noncompetitive market or other rate level revision filings subject to prior approval by the commissioner, \$150 ~~[\$100]~~.

(b) Credit life or health insurance filing requiring review for compliance with KRS 304.19-080, \$200 ~~[\$100]~~.

(c) Health insurance rates requiring review under KRS 304.17A-095, \$500.

(d) Other rate and form filings, \$10 ~~[\$5]~~.

(19) [(48)] Insurance premium finance companies.

(a) Nonrefundable application fee, \$500.

(b) Issuance of original license, \$100. [Application for license, \$500.]

(c) ~~[(b)]~~ Annual renewal, \$200 ~~[\$100]~~.

(d) Filing of premium finance agreements, \$50.

(20) [(49)] Cost of administering subtitle 32 per membership contract in force on December 31 of each year, except the health insurance contract or contracts for state employees as authorized by KRS 18A.225, ten (10) cents.

(21) [(29)] Computer printouts of lists, computer printouts of mailing labels, and magnetic tapes:

(a) Agents:

1. General lines or life and health, \$300.

2. General lines or life and health magnetic tape, \$265.

3. All other lines, \$100.

4. Listing for each ZIP code, \$50.

5. Appointments (activity) of a specific agent, \$5.

(b) Adjusters, consultants, managing general agents, solicitors, surplus lines brokers, and third party administrators, \$90.

(c) Insurer directories:

1. All authorized insurers, \$90.

2. Insurers by line of insurance, \$90.

3. Appointments (activity) by a specific insurer, \$50.

(d) Corporate or partnership agents:

1. Corporate or partnership agent directory, \$90.

2. Corporate or partnership agents by line of insurance, \$90.

3. Appointments (activity) of a specific corporation or partnership agent, \$10.

(e) Other special requests, printouts or magnetic tapes not specified in this section, if the request is approved by the commissioner, the commissioner shall establish the cost for the request.

(22) [(24)] Miscellaneous services.

(a) Filing other documents, each, \$10 ~~[\$5]~~.

(b) Commissioner's certificate under seal, other than certificates, licenses, and other documents provided for in this section, each, \$10 ~~[\$5]~~.

(c) For a copy ~~[copies]~~ of a ~~[any]~~ document on file with the commissioner, per page, fifty (50) ~~[thirty (30)]~~ cents.

(d) For information available on diskette, \$10.

(e) ~~[(d)]~~ Copy of annual statements, per page, \$1.

(23) Insurance holding company systems.

(a) Form A filing fee, \$2,500.

(b) Form B (including Form C) - annual registration statement, filing fee, \$100.

(c) Form D filing fee, \$100.

Section 2. The biennial renewal fees specified in Section 1~~[(6)]~~ (7), (8), (9), (10), ~~[and]~~ (11), and (12) of this administrative regulation are payable as follows:

(1) Licensees for life, health, or life and health insurance or fraternal benefit societies shall renew their licenses on or before March 31 in odd numbered years and biennially thereafter; and

(2) Licensees for casualty, marine and transportation, property, surety, mortgage guaranty, multiple line insurers, risk retention agent, ~~[fraternal benefit societies]~~, or reinsurance intermediaries shall renew their licenses on or before March 31 in even numbered years and biennially thereafter.

~~[Section 3. When a statute or administrative regulation requires payment of a fee as provided in KRS 304.4-010, it refers to a fee as specified in this administrative regulation.]~~

GEORGE NICHOLS III, Commissioner

LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: April 14, 1997

FILED WITH LRC: April 14, 1997 at 3 p.m.

PUBLIC PROTECTION AND REGULATION CABINET Department of Housing, Buildings and Construction Office of the State Fire Marshal (As Amended)

815 KAR 15:026. Existing boilers and pressure vessels; testing, repairs, inspection and safety factors.

RELATES TO: KRS 236.010, 236.030, 236.110, 236.240, 236.250, 236.990 ~~[Chapter 236, 815 KAR 15:010-080]~~

STATUTORY AUTHORITY: KRS 236.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 236.030 requires ~~[authorizes]~~ the commissioner, through the Board of Boiler and Pressure Vessel Rules, to establish ~~[fix]~~ reasonable standards for the inspection and repair of boilers and pressure vessels. This administrative regulation contains the requirements for safe maintenance of those vessels. ~~[This amendment updates the standards from the 1989 edition to the 1995 edition of the National Board Inspection Code.]~~

Section 1. Frequency of Inspection of Existing Vessels. ~~[Inspection frequency.]~~ Upon notification by an inspector, a boiler or pressure vessel ~~[all boilers and pressure vessels]~~ which is ~~[are]~~ subject to an annual or semiannual inspection ~~[inspections]~~ pursuant to KRS 236.110 shall be prepared for the inspection or hydrostatic test by the owner or user.

Section 2. Preparation for Inspections and Tests. (1) The owner or user shall prepare the ~~[each]~~ boiler or pressure vessel for internal inspection and ~~[shall prepare for and]~~ apply the required hydrostatic test ~~[tests]~~ on the date specified by the inspector. The date set for inspection shall be a minimum of ~~[not less than]~~ seven (7) days following ~~[after the date of]~~ notification by the inspector.

(2) The owner or user shall prepare a boiler for internal inspection in the following manner:

(a) Water shall be drawn off and the boiler thoroughly washed;

(b) The ~~[All]~~ manhole and handhole plates, washout plugs, and the plugs in water column connections shall be removed and the furnace and combustion chambers thoroughly cooled and cleaned;

(c) The grate ~~[All grates]~~ of an internally fired boiler ~~[boilers]~~ shall be removed;

(d) During the ~~[At each]~~ annual inspection, brickwork shall be removed as required by the inspector in order to determine the condition of the boiler, header, ~~[boilers, headers,]~~ furnace, supports or other parts;

(e) The steam gauge shall be removed for testing; and

(f) [Any] Leakage of steam or hot water into the boiler shall be cut off by disconnecting the pipe or valve at the most convenient point.

(3) If the boiler is jacketed and the longitudinal seams of shells, drums or domes are not visible, enough of the jacketing, setting wall or other forms, casing or housing shall be removed so that the size of the rivets, pitch of the rivets and other data necessary to determine the safety of the boiler may be obtained~~[, if the information cannot be determined by other means]~~.

(4) If a boiler has not been properly prepared for an internal inspection or the owner or user fails to comply with the requirements for the hydrostatic test established ~~[as set forth]~~ in this administrative

regulation, the inspector may decline to make the inspection or test and the inspection certificate shall be withheld until the owner or user complies with the requirements.

(5) Lap seam crack. A crack in the lap seam extending parallel to the longitudinal joint between or adjacent to rivet holes of the shell or drum of a boiler or pressure vessel shall cause the vessel to be immediately discontinued from use. If the boiler or pressure vessel is not more than fifteen (15) years of age, a complete new course of the original thickness may be installed at the discretion of the inspector and after approval by the chief inspector. Patching shall be prohibited.

(6) Hydrostatic pressure tests. If a hydrostatic test ~~(tests)~~ shall be applied to an existing installation ~~(installations)~~, the pressure shall be as follows:

(a) For determining tightness, the pressure shall be equal to the release pressure of the safety valve or valves having the lowest release setting.

(b) For determining safety or the strength of a vessel and related piping as well as tightness, the pressure shall be equal to one and one-half (1 1/2) times the maximum allowable working pressure, except for a locomotive type boiler ~~(boilers)~~ in which case it shall be one and one-fourth (1 1/4) times the maximum allowable working pressure. The pressure shall be under proper control to prevent ~~(see that in no case shall)~~ the required test pressure from being ~~(be)~~ exceeded by more than two (2) percent.

(c) The temperature of the water used for the hydrostatic test shall not be ~~(be)~~ less than ambient temperature, and ~~(but)~~ shall not be ~~(in no case)~~ less than seventy (70) degrees Fahrenheit, or high enough to allow the metal temperature to exceed 120 degrees Fahrenheit.

Section 3. Safety Factors in Existing Boilers and Pressure Vessels. (1) Maximum pressure and temperature. The maximum allowable working pressure for a standard pressure vessels and the maximum allowable temperature and pressure for standards boilers ~~(vessel or boiler)~~ ~~(vessels and the maximum allowable temperature and pressure for standard boilers)~~ shall be determined in accordance with the ASME Code Edition under which they were constructed and stamped.

(2) Notice of accident or malfunction. If an accident or malfunction shall occur to render ~~(occur, which renders)~~ the boiler inoperative, the owner, user, or insurer shall immediately notify the Boiler Inspection Section and submit a detailed report of the accident or malfunction. If there is ~~(in case of)~~ a serious accident, including ~~(such as)~~ an explosion, notice shall be given immediately by telephone, telegraph, or messenger and ~~(neither)~~ the boiler, pressure vessel or ~~(nor)~~ any of the parts shall not be removed or disturbed before an inspection has been made by an inspector, except for the purpose of saving a human life.

(3) Condemned boilers. A boiler or pressure vessel inspected and found unsafe for further use by the chief boiler inspector or boiler inspector shall be stamped by the inspector with the letters "XX" and the letters "KY," to designate a condemned boiler or pressure vessel, i.e., XX KY 12345 XX.

(4) A person, firm, partnership or corporation using or offering for sale a condemned boiler or pressure vessel for operation within this Commonwealth shall be subject to the penalties in KRS 236.990.

(5) Nonstandard boilers and pressure vessels. Shipment of a nonstandard boiler, pressure vessel ~~(boilers, pressure vessels)~~ or hot water supply boiler ~~(boilers)~~ into this state shall be prohibited, unless exempted under KRS ~~(Chapter)~~ 236.060.

(6) Used boilers. If a nonstandard boiler ~~(Nonstandard boilers)~~, pressure vessel ~~(vessels)~~ or hot water supply boiler ~~(boilers)~~, is ~~(one)~~ removed from use, it shall not be reinstalled.

(7) Removal of safety appliances. A person shall not attempt to remove or work on a any safety appliance while a boiler is in operation unless under the direction of an inspector. If a any safety appliance is repaired during an outage of a boiler or pressure vessel, the appliance shall be reinstalled and in proper working order before the vessel shall be returned to service.

(8) The boiler ~~(All boilers)~~, pressure vessel ~~(vessels)~~ and pressure piping shall be maintained in accordance with the minimum requirements of the edition of the ASME Code which was in effect when it was constructed and installed.

Section 4. Used Vessels. (1) Used boilers or pressure vessels. Before a any vessel is brought into Kentucky for use, it shall be inspected by a boiler inspector or a special boiler inspector and the data shall be filed by the owner or user of the boiler or pressure vessel with the Boiler Inspection Section for approval.

(2) Reinstalled boilers or pressure vessels. If a boiler or pressure vessel is moved and reinstalled, the fittings and appliances shall comply with the ASME Boiler and Pressure Vessel Code ~~(incorporated in 815 KAR 16:025, Section 1(1))~~ and the administrative regulations adopted in 815 KAR Chapter 15.

(3) Unsafe conditions. The inspector shall order increased safety ~~(increases in the)~~ factors ~~(of safety)~~, pursuant to the ASME Boiler and Pressure Vessel Code, if the condition of the boiler is unsafe. If the owner or user does not concur with the inspector's decision, he may appeal to the commissioner who may request a joint inspection by the chief inspector and the boiler inspector or special boiler inspector. Each inspector shall render his report to the commissioner, who shall render the final decision, based upon the data contained in all the inspectors reports.

Section 5. Major Repairs. (1) A major repair ~~(Major repairs)~~ shall require prior approval of an inspector and permits as required by KRS 236.240 and 236.250. Repair to a boiler, pressure vessel ~~(Repairs to all boilers, pressure vessels)~~ and their appurtenances shall conform to the requirements of the National Board Inspection Code ~~(1989 edition)~~, ~~(which is hereby incorporated by reference)~~.

~~(a) The National Board Inspection Code is published by and available from the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, Ohio 43229.~~

~~(b) A copy is also available to be inspected at the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky, Monday through Friday from 8 a.m. to 4:30 p.m.]~~

(2) ~~(a)~~ Compliance with a later edition of the National Board Inspection Code ~~(this code)~~ shall be deemed equivalent and may be used in lieu of the edition specified.

(3) ~~(2)~~ Repairs. Repair to a ~~(Repairs to any)~~ safety valve, safety relief valve, relief valve or liquid relief valve shall be made by a firm possessing the National Board Certificate of Authorization for Use of the Valve Repair (VR) Stamp and the valve shall be stamped with the VR stamp upon completion of the repair.

Section 6. Inspection by Special Inspectors. (1) A special inspector ~~(inspectors)~~ shall submit an inspection report ~~(reports)~~ to the Boiler Inspection Section of the State Fire Marshal's Office on ~~(the following)~~ form HBC-BI-220, ~~(which is incorporated by reference)~~. ~~(-)~~

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HBC-BI-220
INSURANCE NO:

COMMONWEALTH OF KENTUCKY
DEPT. OF HOUSING, BUILDINGS AND CONSTRUCTION
OFFICE OF STATE FIRE MARSHAL
BOILER OR PRESSURE VESSEL INSPECTION

() ADD
() CHANGE
() REINSPECTION

1 INSP DT: EXP DT: YR TYPE STATUS ST OWN STATE NO: NAT BOARD NUMBER:
1 2 ()
() () KY

2 OWNER: ADDRESS:
ADDRESS: CITY: ST: ZIP:

3 USER: () ADDRESS:
ADDRESS: CITY: ST: ZIP:

4 USER PHONE: NATURE OF BUSINESS: COUNTY: SPECIFIC LOCATION IN PLANT:

5 TYPE: YR BLT: MANUFACTURER:
CIS FT OTH HFB HSM WT
() () () () () ()

6 USER: FUEL: INSP TYPE: CERT INSP:
POWER PROCESS STEAM HTG HWH HWS UNFIRED INT EXT YES NO
() () () () () () () () () ()

7 PRESSURE ALLOWED: SAF RELIEF VALVE: SAF VALVE CAP: MIM SAF VALVE CAP:
THIS INSP PREV INSP
SET AT:

8 HYDRO TEST PSI TEST DATE:

VIOLATIONS TO BE CORRECTED ARE BELOW

CODE

1
2
3
4
5
6
7

FEE:

INSP. COMP. DATE: KY COMM.
CONTACT PERSON CERT.

TOTAL CO. NO. INSPECTOR SIGNATURE

CHECK BOX IF ADDITIONAL REMARKS ARE ON BACK ☐
EMPLOYED BY

*****]

(2) An insurance company [~~insurance companies~~] shall notify the Boiler Inspection Section of new, cancelled or suspended risks. The [an] insurance company [companies] shall notify the Boiler Inspection Section within thirty (30) days of each [all] boiler or pressure vessel risk [risks] written, cancelled, not renewed or suspended because of an unsafe condition [~~unsafe conditions~~].

(3) An insurance company [~~insurance companies~~] shall notify the Boiler Inspection Section of a defective boiler or pressure vessel [~~boilers or pressure vessels~~]. If a special boiler inspector finds, upon the first inspection of a boiler or pressure vessel, the boiler or pressure vessel or an appurtenance [~~any of the appurtenances~~] in a condition causing his company to refuse insurance, the company shall immediately notify the Boiler Inspection Section and submit a report of the defect [~~defects~~].

(4) Defective conditions disclosed at time of external inspections. If, ~~upon~~ an external inspection reveals [~~there is~~] evidence of a leak or crack, enough of the covering of the boiler or pressure vessel shall be removed to satisfy the inspector of its safety. If the covering cannot be removed at that time, the special inspector shall order the operation stopped until the covering may be removed and a proper examination made.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "ASME Boiler and Pressure Vessel Code", 1989 Edition, American Society of Mechanical Engineers;

(b) "National Board Inspection Code", 1995 Edition, National Board of Boiler and Pressure Vessel Inspectors; and

(c) Form "HBC-BI-220", 1997 Edition, Department of Housing, Buildings, and Construction.

(2) This material may be inspected, copied, or obtained at the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) The ASME Boiler and Pressure Vessel Code is also available from the American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, New York, 10017.

(4) The National Board Inspection Code is also available from the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, Ohio 43229. [The "National Board Inspection Code", 1995 Edition, is incorporated by reference.

(a) The National Board Inspection Code is published by and available from the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, Ohio 43229.

(b) A copy is also available to be inspected and copies at the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky, Monday through Friday from 8 a.m. to 4:30 p.m.

(2) Special inspection report:

(a) Form "HBC-BI-220", form, is incorporated by reference.

(b) A copy may be obtained or inspected at the Department of Housing, Buildings and Construction, Boiler Inspection Section, 1047 U.S. 127 South, Frankfort, Kentucky, Monday through Friday from 8 a.m. to 4:30 p.m.]

CHARLES A. COTTON, Commissioner

LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: March 13, 1997

FILED WITH LRC: March 13, 1997 at 2 p.m.

CABINET FOR FAMILIES AND CHILDREN
Department for Social Services
Division of Family Services
(As Amended)

905 KAR 2:140. Child day care programs.

RELATES TO: KRS 199.892 - 896, 45 CFR 98, 256, 257, PL 99-457 Part H, PL 94-142.2

STATUTORY AUTHORITY: KRS 194.050, 199.892, 199.899, 45 CFR 98.41, PL 104-193, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194.050 and 199.899 provide [provides] that the Secretary for the Cabinet for Human Resources shall adopt administrative regulations necessary to operate programs and fulfill the responsibilities vested in the Cabinet for Human Resources and provide uniform administration of child day care funds. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Services under the Cabinet for Families and Children. This administrative regulation is necessary to enable the Cabinet for Families and Children [~~Human Resources~~] to qualify to receive federal funds under the Social Services Block Grant, Child Care and Development Block Grant and the Transitional and At-Risk Child Care Programs and for child care services pursuant to 904 KAR 2:017. The function of this administrative regulation is to establish procedures for the implementation of child day care programs.

Section 1. Definitions. (1) "At-risk child care, (ARCC)" means child care assistance provided to non-K-TAP [~~AFDC~~] families who need care in order to work and who may otherwise be at risk of becoming dependent upon K-TAP [~~AFDC~~].

(2) "Attending a job training or educational program" means regular and scheduled participation in a program offering appropriate skills training or education, if post secondary, consistent with employment goals.

(3) "Center-based child care" means a Type I day care facility.

(4) "Certificate" means a payment mechanism provided by DSS and used by a family to secure day care from the provider of choice.

(5) "Certified family child care home" means a home as governed by KRS 199.898(1)(c) and 905 KAR 2:100.

(6) "Child care and development block grant, (CCDBG)" means child care assistance provided to families through the state to improve the affordability, quality and availability of child care services for a low income family to work or attend training or educational programs.

(7) "Child protective cases" means cases registered for services in which the case file contains case documentation that substantiates or reflects some indication of child abuse, neglect, dependency or exploitation. This category may include services to prevent abuse, neglect, dependency or exploitation, including multiproblem families.

(8) "Corporal physical discipline" means the deliberate infliction of physical pain and does not include spontaneous physical contact which is intended to protect a child from immediate danger.

(9) "Day care" means the provision of essential child care for a portion of a day on a regular basis and is designed to supplement, but not substitute for, the parent's responsibility for the child's protection, development and supervision.

(10) "Dedicated child care workers, (DCW)" means the Department for Social Services staff who work strictly with the day care program. The dedicated child care worker provides services to families through the following federally funded programs: Social Services Block Grant, (SSBG), Child Care and Development Block Grant, (CCDBG), At-Risk Child Care, (ARCC), and Transitional Child Care, (TCC).

(11) "Dependent care disregard" means a method of providing child care for K-TAP [~~AFDC~~] and medical assistance recipients with earned income and food stamp recipients with earned income or in training or educational programs which are preparatory to employment

by deducting child care expenses from the gross income, thus allowing the K-TAP [AFDC] recipient to retain more income to pay child care expenses. In cases where recipients are receiving assistance under more than one program, the highest disregard shall be used.

(12) "Eligibility requirements" means that for a family to qualify for child day care funds, except in those instances where day care is provided under SSBG for child protective cases, a family shall meet both need and income status criteria.

(13) "Employment" means public or private, full or part time, permanent or temporary work, including self-employment.

(14) "Enrolled or enrollment" means the process by which unregulated providers become eligible for CCDBG, ARCC, and TCC funds and child care services pursuant to 904 KAR 2:017 by completing the application for provider enrollment and obtaining approval by the Department for Social Services.

(15) "Family" means one or more adults and children related by blood or law, including stepparents, residing in the same residence.

(16) ~~[(16)]~~ "Family child care" means:

(a) Certified family child care homes as governed by 905 KAR 2:100; or

(b) Unregulated care provided for no more than three (3) unrelated children.

(17) ~~[(16)]~~ "Group home child care" means a Type II day care facility.

(18) "Kentucky Transitional Assistance Program (K-TAP)", Kentucky's "Temporary Assistance for Needy Families (TANF) Program" means a money payment program for children who are deprived of parental support or care due to:

(a) Death, continued or involuntary absence, physical or mental incapacity of a parent; or

(b) Unemployment of at least one (1) parent when both parents are in the home.

(19) ~~[(17)]~~ "Licensed child day care facility" means a facility as governed by KRS 199.894.

(20) ~~[(18)]~~ "Physical or mental incapacity" means a child under the age of 18 who has multiple or severe problems diagnosed by a physician or qualified professional, that prevent the child from caring for himself or herself for a part of the day.

(21) ~~[(19)]~~ "Priorities" mean that the client groups identified for receipt of day care are ranked in chronological order by priority.

(22) ~~[(20)]~~ "Provider" means owner, operator or employee, including a volunteer, who works in a Type I or Type II licensed day care facility, certified Family Child Care Home, or enrolled ~~[Unregulated Home or Registered]~~ home.

(23) ~~[(21)]~~ "Purchase of care" means the purchase of child day care services from licensed facilities, certified or enrolled ~~[registered]~~ homes or other eligible provider for authorized children to the extent funds are available.

~~[(22)] "Registered provider" means a provider that is registered with the Department for Social Services as a provider of child care services through the Child Care and Development Block Grant, (CCDBG) or At Risk Program, (ARCC);~~

(24) ~~[(23)]~~ "Relative provider" means a person:

(a) At least eighteen (18) years of age;

(b) Who provides child care services only to a:

1. Grandchild;

2. Great-grandchild;

3. Niece or nephew; or

4. Sibling, who resides in a separate residence; and

(c) Who is related to the children served by:

1. Marriage;

2. Blood relationship; or

3. Court decree. ["Relative provider" means the provider shall be at least eighteen (18) years of age and provide child care services only to eligible children who are by marriage, blood relationship or court decree the grandchild, great grandchild, niece, nephew, or

sibling if the adult sibling is living in a separate residence.] (for registration purposes:

~~(a) Grandparents, aunts and uncles who are required to register with the Department for Social Services before being eligible to receive payment for child care under CCDBG; and-~~

~~(b) Relatives of the child by blood or marriage, eighteen years or older, including grandfather, grandmother, brother, sister, uncle, aunt, nephew, niece or first cousin, including half blood and preceding generations, who are not required to register with the Department for Social Services to be eligible to receive payment for child care under ARCC;]~~

(25) ~~[(24)]~~ "Social services block grant, (SSBG)" means child care assistance provided by licensed or certified providers for families receiving protective and preventive services, including multiproblem families, and low income working parents.

(26) ~~[(25)]~~ "Special needs child" means a child who has multiple or severe problems, and the severity of the disability requires ongoing specialized care as defined under PL 99-457 Part H or PL 94-142.2.

(27) ~~[(26)]~~ "Transitional child care, (TCC)" means child care assistance provided to families whose eligibility for K-TAP [AFDC] has ceased ~~[due to earnings from employment, or as a result of the loss of income disregards due to the expiration of the time limit according to the federal regulation on K-TAP]~~ [AFDC]. The purpose of TCC is to help prevent welfare dependency or potential welfare dependency.

(28) ~~[(27)]~~ "Type I day care facility" means a facility:

(a) Other than a dwelling unit which regularly receives four (4) or more children for day care, including children of a staff member; or

(b) A facility, including a dwelling unit, which regularly provides day care for thirteen (13) or more children, including children of a staff member.

(c) If preschool children of any day care staff receive care in the facility, they shall be included in the number for which the facility is licensed.

(29) ~~[(28)]~~ "Type II day care facility" means a home or dwelling unit which regularly provides care apart from parents for seven (7) to twelve (12) children, including the provider's own preschool children. ~~[, but not more than twelve (12) children. The provider's own pre-school children shall be included in the number for which the home is licensed;]~~

(30) ~~[(29)]~~ "Unregulated provider" means a child care provider who is not subject to be licensed or certified ~~[or registered]~~ by the state or federal government. ~~[Families receiving day care funds through the SSBG may not use unregulated care, however, unregulated care may be used by families receiving TCC or ARCC funds. Relative care as provided through the ARCC program, which is not required to be registered, shall be deemed unregulated.]~~

(31) ~~[(30)]~~ "Waiting list" means a list that may be maintained by district DSS staff once funds are obligated in a district. The list is based on the availability of district day care funds. TCC families shall not be placed on a waiting list due to the uncapped funding source.

(32) ~~[(31)]~~ "Without regard to income" means that SSBG child day care services for child protective cases shall be provided or purchased without regard to family income. In situations where the court is involved, parents may be ordered to pay for part or all of the cost of day care for their child. Voluntary payments by parents may be accepted.

Section 2. Technical Eligibility for CCDBG. A child shall be eligible for services as verified on the DSS-1A, Application for Services, ~~[herein incorporated by reference,]~~ if he:

(1) Is under the age of thirteen (13) or is under the age of eighteen (18) and:

(a) Is physically or mentally incapable of caring for himself as verified by the written determination of:

1. A physician;

2. A licensed or certified psychologist;

3. A qualified mental health professional; or
4. As accepted by a collateral agency (schools, comprehensive care center); or

(b) Is under court supervision;

(2) Resides with a family whose income does not exceed:

(a) Sixty (60) percent of the states median income for a family of the same size at time of application; or

(b) Seventy-five (75) percent of the states median income for a family of the same size at the time of reauthorization; and

~~(3) [(a)]~~ To the extent necessary the eligibility levels of state median income specified in paragraphs (a) and (b) of this subsection may be revised based on the availability of state and federal funds.

~~(4) [(3)]~~ Resides with parents who are working or attending a job training or educational program;

~~(5) [(4)]~~ Fee requirement.

(a) A family receiving CCDBG funds shall be required to contribute toward the payment based on the family's income as described in Section 7(3) of this administrative regulation.

(b) An individual who fails to cooperate in paying required fees may, subject to notices and hearing requirements, lose eligibility for the period of time back fees are owed, unless satisfactory arrangements are made to make full payment.

~~(6) [(5)]~~ Other eligibility conditions or priority requirements including childhood development and before and after school care services, may be established in addition to Sections 3(1) through (5) and 5(4) as long as they shall not:

(a) Discriminate against children on the basis of:

1. Race;
2. National origin;
3. Ethnic background;
4. Sex;
5. Religious affiliation; or
6. Disability.

(b) Limit parental rights as governed by Section 4 of this administrative regulation; or

(c) Violate provisions of Section 7 ~~5~~(4) of this administrative regulation.

Section 3. Technical eligibility for SSBG. (1) The child shall have met the requirements specified in Section 2(1) of this administrative regulation.

(2) The case records shall:

(a) Substantiate or reflect some indication of child abuse, neglect, dependency or exploitation; or

(b) Provide documentation that a family has a need for child care services and with the use of child care the need for protective services may be prevented.

(3) Working parents may be eligible if:

(a) Child care needs exist in order to allow the parent to work;

(b) The family is income eligible as specified in Section 2(2)(a) and (b) of this administrative regulation; and

(c) ARCC and CCDBG funds are obligated.

Section 4. Technical Eligibility and Limitations for TCC. A family shall be notified of its potential eligibility for TCC when its K-TAP [AFDC] benefits are terminated.

(1) The following requirements shall be met during any month for which TCC is paid:

(a) The child shall have met the requirements specified in Section 2(1) of this administrative regulation or would be a dependent child except for the receipt of benefits under Supplemental Security Income (SSI) under 42 USC 1382 or foster care under 42 USC 672.

(b) Child care shall be necessary in order to permit a member of a K-TAP [an AFDC] family to accept or retain employment;

(c) Payments shall not be made for care provided by:

1. Parents;
2. Legal guardians;

3. Members of the assistance group; and

4. Providers not meeting applicable standards of state and local law or not enrolled pursuant to Section 7 of this administrative regulation.

~~(d) [The family shall have ceased to be eligible for K-TAP [AFDC] as a result of:~~

~~1. Increased hours of, or increased income from, employment; or~~

~~2. The loss of income disregards due to the time limitations at Section 4(3)(b) of 904 KAR 2:016;~~

~~(e) The family shall have received K-TAP [AFDC];~~

~~1. In at least three (3) of the six (6) months preceding the first month of ineligibility; and~~

~~2. At least one (1) of the three (3) months was received in the state of Kentucky.~~

~~(f) The family:~~

~~1. Requests TCC benefits;~~

~~2. Provides the information necessary for determining eligibility and fees; and~~

~~3. Meets application requirements.~~

~~(2) Time limitations.~~

~~(a) Eligibility for TCC:~~

~~1. Begins with the first month that the family is ineligible for K-TAP [AFDC]; and~~

~~2. Continues for a period of twelve (12) consecutive months.~~

~~(b) A family may begin to receive child care in any month during the twelve (12) month eligibility period.~~

~~(3) Sanctions. The family is not eligible for TCC for any remaining portion of the twelve (12) month period if the caretaker relative:~~

~~(a) Terminates employment, unless good cause exists as follows:~~

~~1. The individual:~~

~~a. Is personally providing care for a child under age six (6); and~~

~~b. Employment will require the individual to work more than twenty (20) hours per week.~~

~~2. Child care:~~

~~a. Is necessary for the individual to participate in the program or accept employment; and~~

~~b. Is not available; or~~

~~c. The available child care does not meet the special needs of the child, e.g., a child who has physical or mental disabilities.~~

~~3. The individual is unable to engage in employment or training for mental or physical disabilities, including participation in a drug or alcohol rehabilitation program.~~

~~4. Transportation is unavailable and there is no readily accessible alternative means of transportation available.~~

~~5. Travel time to work site exceeds two (2) hours daily.~~

~~6. Illness of another household member requiring the presence of the participant at home.~~

~~7. Temporary incarceration.~~

~~8. Discrimination by an employer based on age, race, sex color, disability, religious beliefs, national origin or political beliefs.~~

~~9. Work demand or conditions that render continued employment unreasonable. Examples are:~~

~~a. Consistently not being paid on schedule; or~~

~~b. The work presents a risk to the individual's health or safety.~~

~~10. Wage rates are decreased subsequent to acceptance of employment.~~

~~11. Acceptance of a better job which, because of circumstances beyond the control of the recipient, does not materialize.~~

~~12. Employment would result in a net loss of cash income.~~

~~13. The client experiences a household emergency, including but not limited to: death of a member of the immediate family, entry into a spouse abuse center, or a natural disaster.~~

~~(b) Fails to cooperate with the State IV-A agency in establishing payment and enforcing child support obligations, per 904 KAR 2:006, Section 16.~~

~~(4) Fee requirements.~~

~~(a) A family receiving TCC shall be required to contribute toward~~

the payment based on the family's income as described in Section 7 [5](3) of this administrative regulation.

(b) An individual who fails to cooperate in paying required fees may, subject to notices and hearing requirements, lose eligibility for the period of time back fees are owed, unless satisfactory arrangements are made to make full payment.

Section 5. Technical Eligibility and Limitations for ARCC. (1) The following requirements shall be met during any month for which ARCC is paid:

(a) The child shall have met the requirements specified in Section 2(1) and (2)(a), (b) of this administrative regulation.

(b) The family:

1. Is at risk of becoming eligible for K-TAP [AFDC];

2. Is not receiving K-TAP [AFDC]; and

3. Needs child care in order to accept employment and remain employed.

(2) Child care limitations:

(a) Child care payments shall be provided:

1. Directly to the provider;

2. In an amount equal to the actual cost up to the payment maximum based on market rates described in Section 7(2) of this administrative regulation; or

3. In an amount equal to the difference between subparagraph b of this paragraph and the amount allowed as a deduction for child care costs to recipients of statutory benefits; and

4. If child care arrangements would otherwise be lost:

a. For up to two (2) weeks prior to the start of employment; or

b. For up to one (1) month during a break in employment if subsequent employment is scheduled to begin within that period.

(b) Payments shall not be made to a provider if the provider is:

1. The parent;

2. The legal guardian;

3. Not meeting applicable standards of state and local law;

4. Not enrolled [registered] by the department as required in Section 7 [5] of this administrative regulation; or

5. Not allowing parental access.

(3) Fee requirements

(a) A family receiving ARCC shall be required to contribute toward the payment based on the family's income as described in Section 7(3) of this administrative regulation.

(b) An individual who fails to cooperate in paying required fees may, subject to notices and hearing requirements, lose eligibility for the period of time back fees are owed, unless satisfactory arrangements are made to make full payment.

Section 6. Parental Rights and Responsibilities. (1) Parents of an eligible child who receive or are offered child care services subject to the availability of state and federal funds shall be offered a choice:

(a) To enroll the child with an eligible child care provider that has a grant or contract, selected by the parent to the maximum extent practicable; or

(b) To receive a child care certificate, the DSS-76, Day Care Services Agreement and Child Care Certificate, herein incorporated by reference, which shall:

1. Be issued to the parent;

2. Be of value commensurate with the value of child care services provided in Section 6(1)(a) of this administrative regulation;

3. If chosen by the parent, may be used for child care services provided by a sectarian organization or agency;

4. Not be considered a contract or grant to the provider but assistance to the parent;

5. Allow parents to choose from a variety of child care categories in compliance with federal regulations governing child day care programs including:

a. Licensed child care facilities;

b. Certified family child care facilities (CFCCH); and

c. Unregulated child care facilities enrolled with the Department for Social Services; or

d. Relative providers as defined in Section 1 of this administrative regulation [Registered child care facilities]; and

6. Inform parents and providers that the agreement may be terminated upon notice that the Department for Social Services has determined that conditions or circumstances at the child day care premises place children at risk of abuse, neglect, or exploitation pursuant to KRS Chapter 620.

(2) Providers of child care services shall afford parents unlimited access to their children and to the provider during normal hours of operation and whenever the child is in the care of the provider.

(3) The cabinet shall:

(a) Maintain a record of substantiated parental complaints; and

(b) Make information regarding parental complaints available to the public upon request.

(4) The cabinet shall make available to the parents and general public, consumer education about parental options relating to child care services including:

(a) Licensing and regulatory requirements; and

(b) Complaint procedures.

Section 7. State and Provider Requirements. (1) The cabinet shall assure that providers of child care services funded under CCDBG, SSBG, ARCC, TCC and pursuant to 904 KAR 2:017:

(a) Shall comply with licensing and regulatory requirements as governed by 905 KAR 2:001, 905 KAR 2:090, 905 KAR 2:110, 905 KAR 2:120 and 905 KAR 2:100;

(b) That are not required to be licensed or certified as governed by 905 KAR 2:001, 905 KAR 2:090, 905 KAR 2:110, 905 KAR 2:120 and 905 KAR 2:100 or are relative providers shall be enrolled [registered] with the cabinet to meet minimum health and safety standards. Providers requesting enrollment shall complete the DSS-1297, Application for Child Care Provider Enrollment: In Child's Home or the DSS-1295, Application for Child Care Provider Enrollment: In Provider's Home and DSS-1296, Child Care Provider Enrollment Self Assessment[~~herein incorporated by reference~~] and meet the following health and safety requirements: [prior to payment under the block grant using the DSS-77, Day Care Billing Statement, herein incorporated by reference except under TCC and relative provided care under ARCC; and

(e) Under CCDBG, nonrelative providers registered with the Cabinet shall become certified as governed by 905 KAR 2:100.

(d) Nonrelative providers providing care in the child's home shall be certified by meeting the requirements as follows:

1. The provider shall be at least eighteen (18) years of age;

2. [The provider shall be physically capable of providing care to children, as stated by a qualified physician;

3. [The provider shall be free of tuberculosis, as stated by a qualified physician or health care specialist;

3. [4-] The provider shall not have been convicted of crimes against children, as shown by a criminal records check conducted within the past year by the Kentucky State Police; and

4. [5-] The provider shall sign an agreement not to use any form of corporal physical discipline on the children entrusted into their care.

(c) The department may deny or terminate an agreement with an unregulated provider if conditions or circumstances at the child care premises places children at risk of abuse, neglect, or exploitation pursuant to KRS Chapter 620.

(d) If the department denies or terminates an agreement with an unregulated provider, the department shall notify the provider in writing stating the reasons for the adverse action and the provider's right of appeal.

(e) If the provider feels an action of the Department for Social Services is unfair, without reason, or unwarranted, the provider may appeal the action, in writing, to the Commissioner of the Department for Social Services, 6th Floor, 275 East Main Street, Frankfort,

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Kentucky 40621, within twenty (20) days after receiving the notice of the action from the department.

(f) Upon receipt of the request for hearing, the commissioner, or designee, shall appoint a hearing officer to review the record, conduct the hearing, and make recommendations upon the matter appealed. Within fifteen (15) days of the assignment, the hearing officer shall notify the provider in writing of the date, time and place of the hearing. The notice shall comply with KRS 13B.050(2) and (3).

(g) The hearing shall be conducted as governed by KRS 13B.080 and Chapter 13B.

(h) The hearing officer shall advise the parties that a recommended order shall be distributed within ten (10) days after the close of the hearing, the parties shall have fifteen (15) days from the date of the recommended order to file exceptions, and a final decision shall be rendered within thirty (30) days from the close of the hearing.

(i) The recommended order shall be filed with the commissioner, or designee, and shall comply with KRS 13B.110.

(j) Within twenty (20) days after receipt of the recommended order, the commissioner, or designee, shall render a final order, either affirming or overturning the initial decision of negative action. The final order shall comply with KRS 13B.120.

(k) If denial or termination of enrollment is upheld, the commissioner's or designee's notification shall specify the date by which the child care payments shall cease.

(2) The cabinet has established maximum child day care payments as follows:

These charts represent the local maximum payment rate on a per day/weekly basis. If care exceeds five (5) days, the rate shall be the weekly maximum payment plus the additional designated daily amount reflecting the applicable rate. Chart abbreviations are as follows: FT - full time; PT - part time; WM - weekly maximum.

KENTUCKY CHILD CARE MAXIMUM PAYMENT LEVELS

WESTERN REGION

Purchase ADD #1
County: McCracken

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	\$13	16	65	12	12	60	11	16	55
Toddler	\$12	16	60	11	11	55	11	16	55
Preschool	\$12	14	60	11	10	55	11	16	55
School Age	\$12	9	60	11	10	55	11	16	55
Special Needs									
Child	\$12	16	60	13	13	65	10	16	50

Purchase ADD #1
Counties: Ballard, Calloway, Carlisle, Fulton, Graves, Hickman, Marshall

Urban	Center			Group Home			Family/In Home		
Rural X	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	\$13	16	65	13	13	65	11	16	55
Toddler	\$13	16	65	13	13	65	11	16	55
Preschool	\$13	14	65	13	13	65	13	16	65
School Age	\$12	9	60	13	13	65	12	16	60
Special Needs									
Child	\$12	16	60	13	13	65	15	16	75

Pennyriple ADD #2
County: Christian

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	\$13	16	65	12	12	60	11	16	55

Toddler	\$12	16	60	11	11	55	11	16	55
Preschool	\$12	14	60	10	10	50	11	16	55
School Age	\$11	8	55	10	10	50	11	16	55
Special Needs									
Child	\$12	16	60	13	13	65	10	16	50

Pennyriple ADD #2
Counties: Caldwell, Crittenden, Hopkins, Livingston, Lyon, Muhlenberg, Todd, Trigg

Urban	Center			Group Home			Family/In Home		
Rural X	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	\$13	16	65	13	13	65	11	16	55
Toddler	\$13	16	65	11	13	65	11	16	55
Preschool	\$13	14	65	13	13	65	13	16	65
School Age	\$12	8	60	13	13	65	12	16	60
Special Needs									
Child	\$12	16	60	13	13	65	15	16	75

Green River ADD #3
Counties: Daviess, Henderson

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	\$13	16	65	12	12	60	11	16	55
Toddler	\$13	16	65	12	11	60	11	16	55
Preschool	\$13	14	65	12	10	60	11	16	55
School Age	\$13	10	65	12	10	60	11	16	55
Special Needs									
Child	\$13	16	65	13	13	65	11	16	55

Green River ADD #3
Counties: Hancock, McLean, Ohio, Union, Webster

Urban	Center			Group Home			Family/In Home		
Rural X	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	\$13	16	65	13	13	65	11	16	55
Toddler	\$13	16	65	13	13	65	11	16	55
Preschool	\$13	14	65	13	13	65	13	16	65
School Age	\$13	10	65	13	13	65	12	16	60
Special Needs									
Child	\$13	16	65	13	13	65	15	16	75

Barren River ADD #4
Counties: Allen, Barren, Butler, Edmonson, Hart, Logan, Metcalfe, Monroe, Simpson, Warren

Urban	Center			Group Home			Family/In Home		
Rural X	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	\$13	16	65	13	13	65	11	16	55
Toddler	\$13	16	65	13	13	65	11	16	55
Preschool	\$13	14	65	13	13	65	13	16	65
School Age	\$12	8	60	13	13	55	12	16	60
Special Needs									
Child	\$13	16	65	13	13	65	15	16	75

Lincoln Trail ADD #5
Counties: Breckinridge, Grayson, Hardin, Larue, Marion, Meade, Nelson, Washington

Urban	Center			Group Home			Family/In Home		
Rural X	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	\$13	16	65	13	13	65	11	16	55
Toddler	\$13	16	65	13	13	65	11	16	55
Preschool	\$13	14	65	13	13	65	13	16	65
School Age	\$12	8	60	13	13	65	12	16	60
Special Needs									

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Child \$12 16 60 13 13 65 15 16 75

Kipda ADD #6

Counties: Bullitt, Jefferson, Oldham, Shelby

Urban X	Center	Group Home	Family/In Home
Rural	FT PT WM	FT PT WM	FT PT WM
Infant	\$15 12 75	14 11 70	13 12 65
Toddler	\$15 14 75	14 11 70	13 12 65
Preschool	\$14 15 70	13 10 65	12 12 60
School Age	\$12 16 60	11 8 55	10 12 50
Special Needs			
Child	\$15 15 75	14 14 70	15 13 75

Kipda ADD #6

Counties: Henry, Spencer, Trimble

Urban	Center	Group Home	Family/In Home
Rural X	FT PT WM	FT PT WM	FT PT WM
Infant	\$16 12 80	15 15 75	15 12 75
Toddler	\$16 14 80	15 15 75	15 12 75
Preschool	\$15 15 75	15 10 75	15 12 75
School Age	\$14 16 70	13 8 65	15 12 75
Special Needs			
Child	\$15 15 75	14 14 70	15 13 75

Northern Ky. ADD #7

Counties: Boone, Campbell, Kenton

Urban X	Center	Group Home	Family/In Home
Rural	FT PT WM	FT PT WM	FT PT WM
Infant	\$16 13 80	15 12 75	14 12 70
Toddler	\$14 14 70	13 11 65	12 12 50
Preschool	\$14 15 70	13 10 65	12 12 60
School Age	\$13 16 65	12 9 60	11 12 55
Special Needs			
Child	\$16 16 80	15 15 75	15 14 70

Northern Ky. ADD #7

Counties: Carroll, Gallatin, Grant, Owen, Pendleton

Urban	Center	Group Home	Family/In Home
Rural X	FT PT WM	FT PT WM	FT PT WM
Infant	\$16 13 80	15 15 75	15 12 75
Toddler	\$16 14 80	15 15 75	15 12 75
Preschool	\$15 15 75	15 10 75	15 12 75
School Age	\$14 16 70	13 9 65	15 12 75
Special Needs			
Child	\$16 16 80	15 15 75	15 14 75

Buffalo Trace ADD #8

Counties: Bracken, Fleming, Lewis, Mason, Robertson

Urban	Center	Group Home	Family/In Home
Rural X	FT PT WM	FT PT WM	FT PT WM
Infant	\$13 12 65	12 12 60	11 9 55
Toddler	\$13 12 65	12 10 60	11 6 55
Preschool	\$13 12 65	12 10 60	15 10 75
School Age	\$13 14 65	12 10 60	12 10 60
Special Needs			
Child	\$13 16 65	12 11 60	10 10 50

Gateway ADD #9

Counties: Bath, Menifee, Montgomery, Morgan, Rowan

Urban	Center	Group Home	Family/In Home
Rural X	FT PT WM	FT PT WM	FT PT WM

Infant	\$13 12 65	12 12 60	11 9 55
Toddler	\$13 12 65	12 10 60	11 6 55
Preschool	\$13 12 65	12 10 60	15 10 75
School Age	\$13 14 65	12 10 60	12 10 60
Special Needs			
Child	\$13 16 65	12 10 60	10 9 50

Fivco ADD #10

Counties: Boyd, Carter, Greenup

Urban X	Center	Group Home	Family/In Home
Rural	FT PT WM	FT PT WM	FT PT WM
Infant	\$14 12 70	13 12 65	12 9 60
Toddler	\$13 12 65	12 10 60	11 8 55
Preschool	\$13 12 65	12 10 60	11 10 55
School Age	\$13 14 65	12 10 60	11 10 55
Special Needs			
Child	\$14 16 70	13 13 65	12 12 60

Fivco ADD #10

Counties: Elliott, Lawrence

Urban	Center	Group Home	Family/In Home
Rural X	FT PT WM	FT PT WM	FT PT WM
Infant	\$14 12 70	13 12 65	12 9 60
Toddler	\$13 12 65	12 10 60	11 8 55
Preschool	\$13 12 65	12 10 60	15 10 75
School Age	\$13 14 65	12 10 60	12 10 60
Special Needs			
Child	\$14 16 70	13 13 65	12 12 60

Big Sandy ADD #11

Counties: Floyd, Johnson, Magoffin, Martin, Pike

Urban	Center	Group Home	Family/In Home
Rural X	FT PT WM	FT PT WM	FT PT WM
Infant	\$13 12 65	12 12 60	11 9 55
Toddler	\$13 12 65	12 10 60	11 7 55
Preschool	\$13 12 65	12 10 60	15 10 75
School Age	\$13 14 65	12 10 60	12 10 60
Special Needs			
Child	\$13 16 65	12 11 60	10 10 50

Kentucky River ADD #12

Counties: Breathitt, Knott, Lee, Leslie, Letcher, Owsley, Perry, Wolfe

Urban	Center	Group Home	Family/In Home
Rural X	FT PT WM	FT PT WM	FT PT WM
Infant	\$13 12 65	12 12 60	11 9 55
Toddler	\$13 12 65	12 10 60	11 8 55
Preschool	\$13 12 65	12 10 60	15 10 75
School Age	\$13 14 65	12 10 60	12 10 60
Special Needs			
Child	\$13 16 65	12 12 60	11 11 55

Cumberland Valley ADD #13

Counties: Bell, Clay, Harlan, Jackson, Knox, Laurel, Rockcastle, Whitley

Urban	Center	Group Home	Family/In Home
Rural X	FT PT WM	FT PT WM	FT PT WM
Infant	\$13 12 65	12 12 60	11 9 55
Toddler	\$13 12 65	12 10 60	11 6 55
Preschool	\$13 12 65	12 10 60	15 10 75
School Age	\$13 14 65	12 10 60	12 10 60
Special Needs			
Child	\$13 16 65	12 10 60	10 9 50

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Lake Cumberland ADD #14

Counties: Adair, Casey, Clinton, Cumberland, Green, McCreary, Pulaski, Russell, Taylor, Wayne

Urban	Center			Group Home			Family/In Home		
	FT	PT	WM	FT	PT	WM	FT	PT	WM
Rural X									
Infant	\$16	8	80	15	15	75	15	12	75
Toddler	\$16	14	80	15	15	75	15	12	75
Preschool	\$15	13	75	15	8	75	15	12	75
School Age	\$14	16	70	13	8	65	15	12	75
Special Needs									
Child	\$14	11	70	14	14	70	15	12	75

Bluegrass ADD #15

Counties: Bourbon, Clark, Fayette, Franklin, Jessamine, Madison, Scott, Woodford

Urban X	Center			Group Home			Family/In Home		
	FT	PT	WM	FT	PT	WM	FT	PT	WM
Rural									
Infant	\$14	11	70	13	11	65	13	12	65
Toddler	\$13	14	65	12	11	60	11	12	55
Preschool	\$13	14	65	12	9	60	11	12	55
School Age	\$13	16	65	12	9	60	11	12	55
Special Needs									
Child	\$14	14	70	14	14	70	15	12	75

Bluegrass ADD #15

Counties: Anderson, Boyle, Estill, Garrard, Harrison, Lincoln, Mercer, Nicholas, Powell

Urban	Center			Group Home			Family/In Home		
	FT	PT	WM	FT	PT	WM	FT	PT	WM
Rural X									
Infant	\$16	11	80	15	15	75	15	12	75
Toddler	\$16	14	80	15	15	75	12	12	60
Preschool	\$15	14	75	15	9	75	15	12	75
School Age	\$14	16	70	13	9	65	15	12	75
Special Needs									
Child	\$14	14	70	14	14	70	15	12	75

(3) The cabinet shall assess a fee which the family shall pay to the provider for the cost of child day care based on the following sliding scale:

CHILD CARE FEE SCHEDULE

Income Range FAMILY SIZE - Fee per agreement per family (Monthly)

		2	3	4	5	6	7	8*
0	399	1.00	1.00	1.00	1.00	1.00	1.00	1.00
400	499	1.00	1.00	1.00	1.00	1.00	1.00	1.00
500	599	1.00	1.00	1.00	1.00	1.00	1.00	1.00
600	699	1.00	1.00	1.00	1.00	1.00	1.00	1.00
700	799	1.00	1.00	1.00	1.00	1.00	1.00	1.00
800	899	2.00	1.00	1.00	1.00	1.00	1.00	1.00
900	999	3.25	1.15	1.00	1.00	1.00	1.00	1.00
1000	1099	4.50	2.25	1.00	1.00	1.00	1.00	1.00
1100	1199	6.00	3.50	1.60	1.00	1.00	1.00	1.00
1200	1299	7.50	5.00	3.10	1.00	1.00	1.00	1.00
1300	1399	8.00	6.00	4.60	1.60	1.00	1.00	1.00
1400	1499	8.60	7.00	6.10	2.65	2.00	1.00	1.00
1500	1599	9.25	7.75	7.00	4.05	3.05	1.25	1.00
1600	1699	9.75	8.25	7.85	5.50	4.50	2.30	1.00
1700	1799	10.25	9.75	8.35	7.10	6.25	3.50	1.50
1800	1899	10.75	10.30	9.30	8.35	7.50	5.20	2.50
1900	1999	11.25	10.60	9.30	9.30	8.80	7.00	3.80
2000	2099	11.75	11.25	9.75	9.75	9.75	8.50	5.30

2100	2199	12.25	11.75	10.25	10.25	10.00	7.10
2200	2299	12.75	12.25	10.70	10.70	10.70	8.90
2300	2399	13.25	12.75	11.25	11.28	11.25	10.80
2400	2499	13.75	13.25	11.75	11.75	11.75	11.75
2500	2599	14.25	13.75	12.25	12.25	12.25	12.25
2600	2699	14.75	14.25	12.75	12.75	12.75	12.75
2700	2799	15.25	14.75	13.25	13.25	13.25	13.25

*For family size above eight (8), the parent fee shall not increase.

(a) Except fees shall not be assessed in:

1. A child protective case under SSBG; or
2. A K-TAP [An AFDC], medical assistance or food stamp case where clients are receiving dependent care disregard.

(b) The DCW shall determine the maximum daily reimbursement rate and parent fee, not to exceed rates as specified in Section 7(2) of this administrative regulation and monitor the payment to the child care provider using the DSS-77, Day Care Billing Statement, ~~herein incorporated by reference~~. If the parent fails to pay the fee the DCW shall develop a plan with the parent to pay the fee.

(c) The DCW shall advise the client to report family and financial changes that may affect authorization of payments. Reauthorizations shall be determined:

1. Every six (6) months; and
2. Upon receipt of reported changes.

(4) The Cabinet for Families and Children ~~[Human Resources]~~ may, except for TCC and protective service cases, establish priorities for child care services as follows:

- (a) Children with special needs;
- (b) Job Opportunity and Basic Skills Program or TCC participants who have children ineligible for child care payments under the programs;
- (c) Families who lose eligibility in another child care program; and
- (d) Other low income working parents or parents attending training or educational programs.

(5) The Department for Social Services shall exchange TCC client specific information to the Department for Social Insurance within ten (10) days of discovery.

(a) The DCW shall report the following case terminations to the local DSI, Division of Field Services Office:

1. When a TCC client quits a job without good cause;
2. Based on a TCC client's failure to pay a parent fee;
3. Based on a TCC client's refusal to cooperate with the Division of Child Support Enforcement; and
4. Client makes suitable arrangements to pay parent fee.

(b) The DCW shall report the following changes in client information to the Division for Child Support Enforcement:

1. TCC case approval for payments;
2. A child left the home;
3. Payments cease for a child;
4. Client's address changes;
5. An absent parent returns to the home;
6. A TCC case is terminated; or
7. A child is added to the case.

(6) Recoupment. The following provisions apply to overpayment in SSBG, CCDBG, TCC and ARCC;

(a) Necessary action shall be taken promptly to correct and recoup an overpayment in a case:

1. Of fraud;
2. Involving a current recipient; and
3. In which the overpayment would equal or exceed the cost of recovery.

(b) An overpayment shall be recovered from the child care provider.

(c) An overpayment shall be recovered through a reduction in the amount payable to the provider.

(d) An underpayment and an overpayment may be offset against each other in adjusting an incorrect payment.

(e) For TCC cases an overpayment, including assistance paid pending a hearing decision, shall be recovered from:

1. The responsible party;
2. The family unit which was overpaid;
3. The provider who was responsible for the overpayment;
4. Individuals who were members of the family when overpaid;

or

5. A family that includes a member of a previously overpaid family.

(7) The DCW shall terminate day care services when due to need or income criteria, clients lose eligibility.

(a) If due to program policy changes the DCW shall:

1. Reassess the families so clients may be given ten (10) days notice of their eligibility, if they do not meet the new criteria after their authorization period expires;

2. Send written notices explaining new eligibility criteria with a notice of intended action.

(b) TCC clients may lose eligibility during the entitlement period without causing permanent termination of benefits if:

1. The client fails to cooperate in paying the parent fee, but later makes suitable arrangements;

2. The client moves out of state and returns to Kentucky within the entitlement period; and

3. The child requiring paid care leaves the home and returns.

(c) K-TAP [AFDC] Unemployed Parent cases continue to be eligible for TCC without a deprivation.

(8) The child care worker shall notify the client of their rights to notice of adverse actions, hearings and appeals as governed by 905 KAR 1:320, Fair Hearing.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Child Care Services Agreement and Child Care Certificate", DSS-76, (October, 1995), Cabinet for Families and Children;

(b) "Child Care Billing Statement", DSS-77, (April, 1995), Cabinet for Families and Children;

(c) DSS-1A, the procedural instructions, (July, 1996), Cabinet for Families and Children;

(d) "Application for Child Care Provider Enrollment: In Child's Home", DSS-1297, (October, 1996), Cabinet for Families and Children;

(e) "Application for Child Care Provider Enrollment: In Provider's Home", DSS-1295, (October, 1996), Cabinet for Families and Children; and

(f) "Child Care Provider Enrollment Self Assessment", DSS-1296, (October, 1996), Cabinet for Families and Children.

(2) This material may be inspected, copied, or obtained at the Department for Social Services, CHR Building, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. [Material Incorporated by Reference. (1) The DSS 76, Child [Day] Care Services Agreement and Child Care Certificate revised October, [March] 1995, the DSS 77, Child [Day] Care Billing Statement revised April [March], 1995 and the DSS 1A procedural instructions revised July, 1996 [March, 1995], the DSS 1297, Application for Child Care Provider Enrollment: In Child's Home, October, 1996, the DSS 1295, Application for Child Care Provider Enrollment: In Provider's Home, October, 1996, and the DSS 1296, Child Care Provider Enrollment Self Assessment, October, 1996, shall be incorporated by reference.

(2) Material incorporated by reference may be inspected and copied at the Department for Social Services, CHR Building, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.]

DONNA HARMON, MSW, Commissioner
VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: May 6, 1997
FILED WITH LRC: May 6, 1997 at 11 a.m.

CABINET FOR FAMILIES AND CHILDREN
Division of Program Management
Department for Social Services
(As Amended)

905 KAR 5:080. Certification of assisted living residences.

RELATES TO: KRS Chapter 13B, 209.200

STATUTORY AUTHORITY: KRS 194.050, 209.200, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: KRS 209.200

authorizes the cabinet to establish requirements for the voluntary certification of an assisted living residence. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Social Services and the Adult Protection Program under the Cabinet for Families and Children. This administrative regulation **establishes [will establish]** the requirements for the voluntary certification of an assisted living residence which emphasizes personal dignity, autonomy, independence, and privacy and enhances the person's ability to age in a home-like setting while services intensify or diminish according to the individual's changing needs. This administrative regulation **establishes [shall [and] establish]** procedures for application, review and approval including the conduct of hearings upon appeals as governed by KRS Chapter 13B.

Section 1. Definitions. (1) "Apartment" means as governed by KRS 209.200.

(2) "Applicant" means the owner and operator if under a long-term lease.

(3) "Assisted living residence" means as governed by KRS 209.200.

~~[(3) "Health-related services" means services that are required to be provided by a licensed or certified health care professional.]~~

(4) "Home-style housing unit" means as governed by KRS 209.200.

(5) "Supportive services" means as governed by KRS 209.200.

Section 2. Voluntary Certification Process. (1) The cabinet or designee shall be responsible for the certification of assisted living residences. Application for initial and renewal voluntary certification shall be made on **an Application for Certificate of Assisted Living Residences form [forms, herein incorporated by reference].**

(2) An applicant making application for initial or renewal certification shall provide:

(a) The name and address of each officer, director, and trustee of the assisted living residence, and the names and addresses of limited partners or shareholders with more than twenty-five (25) percent interest in the assisted living residence;

(b) Assurances that no officer, director, trustee, limited or general partner, or shareholder has ever been convicted of crimes which would constitute a felony, class A misdemeanor or abuse of a person;

(c) A floor plan of the entire assisted living residence complex;

(d) An operating plan which shall include the following information:

1. The number of units for which certification is sought;
2. The location of resident units, common spaces and exits by floor;
3. The fee structure for lodging, meals and services;
4. The type and extent of services to be offered, arrangements for providing the services, including third party contracts, linkages with hospital and community services, and transportation availability;
5. A plan to provide timely assistance to tenants and respond to urgent or emergency needs;

6. The number of staff to be employed in the operation of the assisted living residence and their minimum qualifications and responsibilities;

7. A copy of the tenant agreement that will be used by the assisted living residence;

8. A current copy of all required building, fire safety, and locally approved state sanitation code certificates or permits;

(e) Information documenting substantial changes to the operating plan prior to the effective certification date and as otherwise required by the cabinet or designee;

(3) The cabinet or designee shall not process an application for an original or renewal certification unless the application:

(a) Includes all information, required attachments and statements; and

(b) For new construction or substantial rehabilitation, has been submitted within sixty (60) days of planned opening of the assisted living residence but no later than within thirty (30) days prior to the planned opening.

(4) The cabinet or designee shall approve an applicant for an initial two (2) year certification or biennial renewal certification if:

(a) The cabinet or designee determines that the information provided in the application meets the requirements as governed by KRS 209.200 and this administrative regulation.

(b) The cabinet or designee has conducted a compliance review of the assisted living residence and has determined that the premises meet the requirements of KRS 209.200 and are in compliance with this administrative regulation. A compliance review shall include the following:

1. A review of the operating plan and an inspection of the common areas of the assisted living residence. The inspector may interview the applicant, manager, staff and tenants of the assisted living residence. Interviews with tenants shall be conducted privately and shall be confidential; ~~and~~

2. An inspection of the living quarters of any tenant, but only with the tenant's prior oral or written consent; ~~and~~

3. A \$100 inspection fee payable to the Kentucky State Treasurer.

(5) Renewal certification procedures.

(a) The cabinet or designee shall renew for a term of two (2) years, based on the certification date of issuance, the certification of an assisted living residence if the cabinet or its designee determines that the owner and the assisted living residence meet the requirements of KRS 209.200 and this administrative regulation.

(b) If the owner's renewal application of certification is filed and date stamped by the cabinet or designee at least thirty (30) days before the stated expiration date of the certification, the certification shall not expire until the cabinet can ~~[such time as the cabinet may]~~ notify the owner that the application for renewal has been denied.

(c) The renewal application shall have any document which amends, supplements, updates or otherwise revises the operating plan, floor plan, or service plan outlined in the original or renewal application for certification attached.

(6) Changes during the biennial certification.

(a) In the case of a report or citation of a violation of provisions of the state sanitation code, state building code, fire safety regulations or other administrative regulations affecting the health, safety, or welfare of residents, a copy of the report or citation shall be submitted to the cabinet or designee within seven (7) days of receipt of notice and may result in a compliance review.

(b) In the case of a change in ownership of a certified assisted living residence, an applicant shall submit an application for certification at least thirty (30) days prior to the change of ownership or a change in the name of the complex.

(7) Each certification shall be valid only in the possession of the residence and the owner to whom it is issued and shall not be subject to sale, assignment or other transfer, voluntary or involuntary.

(8) A certification shall not be valid for any building premises other than those for which the certification was originally issued.

(9) The assisted living residence certification shall be displayed in a conspicuous place in the residence.

(10) The certification of an assisted living residence shall be returned by registered mail to the cabinet or designee upon:

(a) Revocation of or refusal to renew the certification;

(b) Transfer of ownership of the assisted living residence;

(c) Change of name of the assisted living residence; and

(d) Closure or other termination of the residence' existence or authority to operate.

(11) A biennial compliance review is required for all certified assisted living residences. The cabinet or designee shall conduct reviews of assisted living residences to determine compliance for the issuance or reissuance of certificates. The cabinet or designee may conduct a compliance review any time there is reasonable cause or belief that a certified assisted living residence is in violation of this administrative regulation.

(12) An employee of the cabinet or designee shall have the right to enter and inspect, without prior notice, the common areas and office areas of any assisted living residence for which an application has been received or for which certification has been issued.

Section 3. Compliance Review Reports, Findings, and Responses. When a compliance review is conducted, the cabinet or designee shall prepare written findings summarizing all pertinent information obtained during the review and shall not disclose confidential, private, proprietary or privileged information obtained in connection with the review.

(1) If the cabinet or designee finds that the applicant is in compliance with this administrative regulation, the cabinet shall notify the applicant of the findings within ten (10) days after the compliance review is completed.

(2) If the cabinet or designee finds that the applicant is not in compliance with this administrative regulation, the cabinet shall forward a notice of noncompliance to the applicant. The notice shall be delivered by certified mail, return receipt requested within ten (10) days after completion of the review of the assisted living residence. The notice shall:

(a) Describe the noncompliance with particularity and include the corrective action to be taken by the applicant.

(b) Include a description of the action that shall be taken by the cabinet or designee regarding the application or certification status if the corrective action is not completed;

(3) Within ten (10) days after receiving the notice of non-compliance, the applicant shall submit a corrective action plan specifying dates by which noncompliance shall be corrected. The corrective action plan shall be submitted by certified mail, return receipt requested.

(4) If the applicant does not respond to the cabinet within the ten (10) day period or if the applicant agrees to take the corrective action but fails to complete the required corrective action within the specified time frame, the cabinet shall commence the action described in the notice of noncompliance.

(5) The cabinet or designee shall review and may deny, suspend, or revoke certification if the applicant fails to comply with certification standards set forth in this administrative regulation.

Section 4. Appeal. (1) If the cabinet or designee intends to deny, suspend, or revoke a certification, the cabinet or designee shall notify the applicant in writing stating the reasons for the adverse action and the applicant's right to appeal.

(2) Upon appeal, the applicant shall be afforded a hearing. Notice of hearing shall comply with KRS 13B.050 and shall be conducted in accordance with KRS Chapter 13B.

Section 5. General Requirements for an Assisted Living Residence. An assisted living residence shall meet the following requirements to obtain and maintain certification:

(1) Physical requirements.

(a) An assisted living residence shall provide only single occupancy (unless shared with spouse, other family member or another individual by mutual agreement) apartments with lockable doors on the entry door of each apartment. Residents shall have exclusive rights to their apartments.

(b) Each apartment shall include:

1. A private bath with one (1) lavatory;
2. One (1) toilet;
3. A bathtub or shower stall; and
4. A kitchenette consisting of a:

a. Refrigerator;

b. Sink;

c. Cabinet area; and

d. Microwave which shall [may] not be required if the facility serves three (3) meals per day in a central dining room and has available community cooking facilities. [microwave, refrigerator, sink and cabinet area.]

(c) For those home-style residences, each tenant shall be provided:

1. An individual bedroom with lockable door;
2. A shared bathroom with one (1) other bedroom; and
3. The use of the community kitchen facilities.

(d) Every assisted living residence shall meet the requirements of the state sanitation, building, and fire and safety code laws and the building shall comply with administrative regulations governing use and access by persons with disabilities.

(2) Supportive service requirements. A supportive service package is required for an assisted living residence seeking certification or renewal of certification. The service package may include:

(a) Eating;

(b) Dressing;

(c) Bathing;

(d) Transferring;

(e) Toileting;

(f) [Assistance with household chores;

(g) [(b)] Cleaning;

(h) [(c)] Shopping;

(i) [(d)] Meals;

(j) [(e)] Laundry;

(k) [(f)] Transportation;

(l) [(g)] Twenty-four (24) hour supervision;

(m) [(h)] Organized social and recreational activities;

(n) [(i)] A congregate meal site;

(g) [(e)] [(j)] Barber and beauty services;

(h) [(p)] [(k)] Sundries for personal consumption;

(i) [(q)] [(l)] Supervision of self-administration of [administered] medications[; and

(r) [(m)] Health [related] services which require a licensed, certified or cabinet approved provider shall be arranged through and provided by such a provider].

Section 6. Tenant Rights and Agreement. (1) A lease agreement which clearly describes the rights and responsibilities of the tenant and owner shall be drawn between a certified living residence and a tenant, or his legal representative, who seeks to reside in the residence. The tenant agreement shall be signed by the tenant or his legal representative and the authorized signatory for the assisted living residence.

(a) The tenant agreement shall include the following:

1. Charges, expenses and other assessments for the provision of tenant services, lodging and meals;
2. The agreement of the tenant to make payment of the charges specified;
3. Arrangements for payment;
4. A tenant grievance procedure;
5. The owner's covenant to comply with applicable federal and

state laws and regulations concerning consumer protection and protection from abuse, neglect and financial exploitation of the elderly and disabled;

6. The conditions under which the tenant agreement may be terminated by either party;

7. Reasonable rules for conduct and behavior of the staff, management and the tenant; and

8. A copy of the tenants' rights.

(b) The tenant agreement may include the agreement of the owner to provide or arrange for the provision of additional services as identified in the supportive services package.

(c) The tenant agreement shall be for a term not to exceed one (1) year and may be renewable upon the agreement of both parties. The tenant agreement shall be for a single-living apartment. It is permissible for the apartment to also be inhabited by a spouse, other family member or another adult by mutual agreement provided all household members are a party to the tenant agreement.

(2) Tenant rights. Every tenant of an assisted living residence shall have the right to:

(a) Live in a decent, safe, and habitable residential living environment;

(b) Be treated with consideration, respect and due recognition of personal dignity, autonomy, individuality and the need for privacy;

(c) Privacy within the tenant's unit during provision of health related services subject to rules of the assisted living residence reasonably designed to promote the health, safety and welfare of tenants;

(d) Private communications, including receiving and sending unopened correspondence, access to a telephone, and visiting with any person of his choice;

(e) Freedom to participate in and benefit from community services and activities, and to achieve the highest possible level of independence, autonomy, and interaction within the community;

(f) Retain and use his own personal property, space permitting, in the tenant's living area so as to maintain individuality and personal dignity;

(g) Directly engage or contract with any licensed health care provider to obtain necessary health care services in the tenant's unit or in another [such other] space in the assisted living residence as may be made available to tenants for such purposes, to the same extent available to persons residing in private homes;

(h) Manage his own financial affairs;

(i) Exercise civil and religious liberties;

(j) Present grievances to the manager or staff of the assisted living residence government, officials or to any other person without restraint, interference, coercion, discrimination, or reprisal.

(k) Confidentiality of all records and communications to the extent provided by law, regulations, or policies of the residence which apply to the conduct of a tenant;

(l) Obtain from the manager of the assisted living residence a copy of any rules or regulations of the residence which apply to his conduct as a tenant; and

(m) Not be evicted from the assisted living residence except in accordance with the provisions of the lease agreement, state statutes and local ordinances.

Section 7. **Incorporation by Reference. (1) "Application for Certificate of Assisted Living Residences", (1997 Edition), Department for Social Services, is incorporated by reference.**

(2) It may be inspected, copied, or obtained at Department for Social Services, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [Material Incorporated by Reference. (1) The "Application for Certificate ["Certification Application for Owners] of Assisted Living Residences" shall be herein incorporated by reference.

(2) Material incorporated by reference may be inspected and copies obtained at the Department for Social Services, 6th Floor, 275

~~East Main Street, Frankfort, Kentucky 40601 or at the Kentucky Housing Corporation, 1231 Louisville Road, Frankfort, Kentucky 40601. Office hours are 8 a.m. to 4:30 p.m.]~~

DONNA HARMON, Commissioner

VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: May 1, 1997

FILED WITH LRC: May 2, 1997 at 9 a.m.

CABINET FOR FAMILIES AND CHILDREN
Department for Social Services
Division of Aging Services
(As Amended)

905 KAR 8:160. Adult day and Alzheimer's respite program.

RELATES TO: KRS 205.201, 205.203, 205.455-465, 902 KAR 20:066, 902 KAR 20:200, 905 KAR 8:180, 42 USC 3001 et seq.

STATUTORY AUTHORITY: KRS 194.050, 205.204(2), EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: 42 USC 3001 et seq. [~~the Older Americans Act of 1965, as amended,~~] authorizes grants to states to provide assistance in the development of new or improved programs for older persons. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Services and the Aging Program under the Cabinet for Families and Children. KRS 194.050 authorizes the Cabinet for Families and Children [~~Human Resources~~] to adopt administrative regulations as necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. KRS 205.204 designates the Cabinet for Families and Children [~~Human Resources~~] as the state agency to administer 42 USC 3001 et seq. [~~the Older Americans Act~~] in Kentucky. The function of this administrative regulation is to set forth the standards of operation for the adult day and Alzheimer's respite program. [~~in Kentucky, in compliance with the statutory requirement of KRS 13A-221 that requires a separate administrative regulation for each topic of general subject matter.~~]

Section 1. Definitions. (1) "Adult day services" means a supportive and therapeutic social program of supervision and care:

(a) Provided to an eligible adult during a part of the day, but for less than twenty-four (24) hours; and

(b) For: ["Adult day services" means a supportive and therapeutic social program of supervision and care provided to an eligible adult during a part of a day, but less than twenty-four (24) hour care. Programs provide supervision for:]

1. [(a)] Self-administration of medications;
2. [(b)] Personal care services;
3. [(c)] Self-care training;
4. [(d)] Social activities; and
5. [(e)] Recreational opportunities.

(2) "Adult day health services" means a licensed program to provide continuous supervision of the participant's medical and health needs.

(3) "Adult day center" means a community based facility in which adult day supervision is provided in a group setting.

(4) "Alzheimer's disease and related dementing diseases" mean neurological diseases causing gradual and irreversible impairment of intellectual functioning of a sufficient severity to interfere with an individual's daily activities.

(5) "Alzheimer's respite" means a therapeutic social program of supervision and care provided to a participant with Alzheimer's disease or related dementing disease to enable the caregiver temporary relief from caregiving duties.

(6) "Assessment" means the collection of information about a

person's situation and functioning which identifies needs and resources so that a comprehensive plan of care can be developed.

(7) "Case management" means:

(a) A process for ensuring that participants receive appropriate, comprehensive and timely services to meet their needs as identified in the assessment process;

(b) Planning;

(c) Linking the participant to appropriate agencies in the formal and informal caregiving systems;

(d) Monitoring; and

(e) Advocacy through case work activities in order to achieve the best possible resolution of individual needs.

(8) "Center respite" means respite provided in a group setting outside the home.

(9) "Identifiable space" means space set apart by visible barriers from other activities within the setting.

(10) "In-home respite" means respite provided in the participant's home.

(11) "Licensed adult day health center" means a program licensed by the Kentucky Cabinet for Health Services [~~Commission for Health Economics Control~~] in accordance with 902 KAR 20:066.

(12) "Personal care services" means activities to help participants achieve and maintain good personal hygiene, including assistance with walking, eating, grooming and toileting.

(13) "Plan of care" means a written guide of action:

(a) Developed and agreed upon by the participant, the primary caregiver, the director and program case manager;

(b) Based upon the participant's needs, goals, and resources; and

(c) Including appropriate services to meet identified needs and achieve objectives.

(14) "Reassessment" means the formal reevaluation of the participant's situation and functioning and of the services delivered to identify changes which may have occurred since the last assessment.

(15) "Unit of service" means one-half (1/2) hour of direct service.

Section 2. Eligibility. To participate in the adult day and Alzheimer's respite programs, an individual shall:

(1) Be able to respond and share in program activities without health and safety problems to self or others; and

(2) [shall] Meet at least one (1) of the following requirements:

(a) Be:

1. [(1)-A person age] Sixty (60) years of age or older;

2. [who is] Physically disabled or frail as a result of medical condition or age; and

3. In need of [who needs] supervision or assistance during part of the day.

(b) Be:

1. [(2)-A person age] Sixty (60) years of age or older;

2. [who is] Mentally confused; and

3. In need of [needs] supervision to prevent injury and assure proper nutrition and medication use.

(c) Be:

1. [(3)-A person age] Sixty (60) years of age or older; and

2. One who, because of emotional or social needs, may benefit from the individualized attention and social structure available through these services which are not otherwise available. [-or]

(d) Be:

1. [(4)-A person of] Any age; and

2. Have [with] a diagnosis of probable Alzheimer's or related dementing disease, as confirmed by a written statement from a physician after a diagnostic evaluation.

Section 3. Assessment and Case Management. (1) Each applicant for services shall be assessed and certified eligible and in need of services. A plan of care shall be developed using the completed assessment, with participant involvement to the fullest extent of his abilities.

(2) The participant shall be referred by the case manager for other needed services identified by the assessment. Case management shall be provided to those participants receiving multiple services, but shall be provided by one (1) service provider only.

(3) The program director shall arrange or provide a formal reassessment at least every six (6) months.

Section 4. Fee for Service. (1) The following adult day and Alzheimer's respite fee schedule shall be utilized in determining the minimum fee which shall be charged an eligible individual who has received service. The cost of the service unit as determined by the state or contracting entity in accordance with its contract shall be multiplied by the applicable percentage rate based upon income and size of family as set forth below.

Adult Day and Alzheimer's Respite Participant
Income and Applicable Percentage of Fee

Annual Income	1 Person	2 Persons
\$8000 and below	0%	0%
\$8001 - \$10150	20%	0%
\$10151 - \$12300	40%	20%
\$12301 - \$14450	60%	40%
\$14451 - \$16650	80%	60%
\$16651 - \$18850	100%	80%
\$18851 - \$20950		100%

For each additional family member, add \$2150.

(2) In determining the eligible individual's ability to pay a fee, any extraordinary medical or other related expense may be taken into consideration.

(3) SSI income shall not be considered available to other family members. If an applicant is receiving SSI benefits, he shall be considered a family of one (1) for the purpose of fee determination.

Section 5. Responsibilities of the Service Provider. (1) The service provider shall meet the following general requirements:

(a) Assure that program staff shall treat the participant and caregiver in a respectful and dignified manner, involving them in decisions regarding the delivery of services;

(b) Assure that services are provided in a safe manner;

(c) Provide a unit cost figure to the case manager or assessor to be used as a basis for determining the applicable percentage of the fee schedule;

(d) Collect the fee for service as determined by the case manager or assessor. Fees and donations shall be budgeted and used to increase services;

(e) Have and use appropriate procedures for referrals to other service agencies or programs;

(f) Conduct community education and outreach activities to reach prospective participants;

(g) Comply with applicable administrative policies and procedures and service contracts; and

(h) Provide access for staff of the area development district and the Cabinet for Families and Children ~~(Human Resources)~~ for monitoring and evaluation purposes.

(2) The service provider shall meet the following program requirements for in-center services:

(a) Establish a schedule of days and hours of operation to be posted in a conspicuous place. A written copy of the schedule shall be given to the participant and the caregiver;

(b) Operate the program a minimum of four (4) hours per day, three (3) days per week, excluding holiday and emergency closings;

(c) Supervise program activities. Supervision shall be provided by staff or volunteers meeting staff requirements as set forth in Section 7 of this administrative regulation;

(d) Provide a balance of planned individual and group activities to meet participant needs, abilities and interests as determined by the individual plan of care;

(e) Provide participants an opportunity to plan and evaluate activities on a monthly basis;

(f) Provide participants a choice of activities and an opportunity to refuse to participate in the activity;

(g) Post a monthly calendar of planned activities and available services in a conspicuous place. Records shall be maintained for monitoring purposes;

(h) Provide assistance, if [when] necessary, with activities of daily living including:

1. Walking;
2. Eating;
3. Grooming;
4. Toileting; and
5. Personal hygiene;

(i) Comply with the Division of Aging Services, Department for Social Services policies and procedures for self-administration of medications;

(j) Provide a meal that complies with the Division of Aging Services' nutrition program policies if the program is in operation during a normal meal hour. A therapeutic diet ~~[Therapeutic diets]~~ shall be available in accordance with a physician's order at licensed adult day centers;

(k) Allow participants, as a supplementary activity to staff assignments, an opportunity to assist in planning menus;

(l) Offer nutrient dense snacks, water and other liquids at regularly scheduled times during the day;

(m) Post a monthly calendar of menus in a conspicuous place if meals are provided. Maintain menus for monitoring purposes;

(n) Provide first aid and make arrangements for medical care with the participant's physician or hospital for accidents or medical emergencies;

(o) Notify the family or other appropriate person of any significant changes in the participant's mental or physical condition;

(p) Refer participants to health professionals of their choice, as needed;

(q) Establish linkages with other community agencies and institutions to better coordinate services;

(r) Assist participants and their families in identifying and accessing community agencies for:

1. Financial;
2. Social;
3. Recreational;
4. Educational;
5. Medical; and
6. Other services;

(s) Assist the family in arranging transportation; and

(t) Notify the area agency on aging immediately of a negative incident or accident involving a participant or employee, providing a written report if requested.

(3) The service provider operating a licensed adult day health center shall:

(a) Comply with licensure requirements of 902 KAR 20:066;

(b) Assure that health care needs are met;

(c) Provide self-care training;

(d) Provide personal care services; and

(e) Maintain a medication sheet in accordance with 902 KAR 20:066 if medications are administered to a participant.

(4) In-home respite care service providers shall comply with the following:

(a) Establish a monthly schedule of days and hours of service for each client based on the assessment, plan of care, and agreement with the participant and caregiver;

(b) Provide a copy of the schedule to the caregiver; and

(c) Supervise the participant and program activities as determined

by the assessment and plan of care.

Section 6. Facility Requirements. Adult day and Alzheimer's respite program providers operating facilities for services shall:

(1) Comply with requirements outlined in 902 KAR 20:066 for a licensed adult day health center;

(2) Locate the center in a geographic area that provides convenient access to a majority of older persons;

(3) Locate, design, and furnish the center to assure access and to accommodate the special needs of older persons, including individuals with handicaps;

(4) Provide sufficient space and arrangements of furnishings to allow for:

(a) Adequate client movement;

(b) Program activities;

(c) Food service; and

(d) Socialization;

(5) Provide sufficient private office space to permit individual counseling and confidential maintenance of records;

(6) Provide appropriate lighting, heating, cooling and ventilation for participant comfort and program activities;

(7) Equip each center with bathroom facilities meeting the following requirements:

(a) A minimum of one (1) toilet for each ten (10) participants with equal number of wash basins;

(b) Easy accessibility to the handicapped;

(c) In men's bathrooms urinals may be substituted for up to one-half (1/2) the number of toilets required;

(d) Cleaned and sanitized daily; and

(e) Hot and cold running water, mirror, soap and towels;

(8) Comply with applicable housing and health codes;

(9) Obtain initial and annual inspection by state or local fire safety officials and comply with requirements;

(10) Maintain at least one (1) fire extinguisher with initial and annually updated inspection tags;

(11) Maintain a fully equipped first aid kit, with unexpired contents, as defined by the American Red Cross;

(12) Provide identifiable space during hours of operation for participants in need of a more private environment or rest area;

(13) Provide separate identifiable space during operational hours, if co-located in a facility housing other services. Certain space may be shared, like the dining room, kitchen and therapy rooms.

Section 7. Program Staff. (1) Staffing requirements for in-center programs shall include:

(a) Trained and experienced staff shall be present each day of operation;

(b) Staffing ratios shall be one (1) staff for each five (5) participants;

(c) There shall be at least two (2) responsible persons at the center at times when there are more than one (1) participant in attendance, one (1) of whom shall be a paid staff member;

(d) Volunteers may be included in the staff ratio if they meet staff qualifications and training requirements;

(e) At least one (1) staff member who has completed first aid training shall be present at times that participants are in attendance.

(2) Staff qualifications for programs shall be as follows:

(a) Directors of centers shall meet one (1) of the following requirements:

1. A trained social worker possessing:

a. A minimum of a bachelor's degree in social work or a related field relevant to geriatrics; and

b. Two (2) years professional experience; or

c. A master's degree in social work; and

d. Six (6) months professional experience working directly with the elderly; or

2. A registered or practical nurse licensed in Kentucky with two

(2) years professional experience working directly with the elderly while an employee of a:

a. Home health agency;

b. Long-term care facility;

c. Public health agency; or

d. Social service agency;

3. An individual at least twenty-one (21) years of age with:

a. A high school diploma or GED certificate;

b. Two (2) years professional education in social services, health or geriatrics; and

c. Two (2) years professional experience working directly with the elderly;

4. ~~4.-~~ Professional experience shall substitute for professional education on a year-for-year basis, and shall include working directly with the elderly while an employee of a public or private health or social service agency.

(b) Administrators of licensed adult day health programs shall meet requirements as governed by 902 KAR 20:066, Operations and services, day health care programs.

(c) Staff responsible for assessments or case management for participants shall meet one (1) of the following:

1. A bachelor's degree or master's degree in social work, gerontology, psychology, sociology, or a ~~related~~ field relevant to geriatrics, no experience required;

2. ~~A master's degree in social work;~~

3. ~~A bachelor's or master's degree in nursing with a current Kentucky [registered] nursing license, no experience required;~~

3. ~~4.-~~ A bachelor's degree with [supplemented by] two (2) years [professional] experience in working [directly] with the elderly; or

4. ~~5.-~~ A Kentucky registered nurse with a current Kentucky license and two (2) years experience or licensed practical nurse with a current Kentucky license and three (3) years experience [registered or practical nurse licensed in Kentucky with two (2) years professional experience] working [directly] with the elderly; and

5. Volunteer experience working with the elderly shall be counted on an hour-for-hour basis.

(d) Employees and volunteers with ongoing client contact shall submit evidence of tuberculosis testing, which shall be maintained in the personnel file, as governed by 902 KAR 20:200:

1. Within one (1) year prior to employment; or

2. During the first week of employment; and

3. Annually thereafter;

4. ~~Evidence of testing shall be maintained in the personnel file.~~

(e) An employee or volunteer contracting an infectious disease shall not appear at work until the infectious disease can no longer be transmitted.

(f) In-home respite staff shall meet the above requirements and shall:

1. Be twenty-one (21) years of age if working independently; or

2. If working as a team to provide direct services, one (1) member shall be at least twenty-one (21) years of age and the other staff member shall be at least eighteen (18) years of age.

(3) Training of staff shall be provided by appropriate qualified professionals as follows:

(a) Prior to assuming duties, paid and volunteer personnel shall receive orientation to the program and center including:

1. Program objectives;

2. Program policies and procedures;

3. Health, sanitation, emergency and safety codes and procedures;

4. Participant confidentiality; and

5. Personnel policies and procedures;

6. Policies and procedures shall be explained verbally and provided in writing.

(b) Within three (3) months of employment, personnel shall be provided basic training that includes:

1. The aging process;

2. Communications;
3. Personal care;
4. First aid;
5. Identifying and reporting health problems; and
6. Stress management.

(c) In addition to basic training, Alzheimer's respite personnel shall be provided training in:

1. Dementia;
2. Causes and manifestations of dementia;
3. Managing the participant with dementia;
4. Crisis intervention with combative participants; and
5. Effects of dementia on the caregiver.

(d) A minimum of eight (8) hours of annual training to review and update knowledge and skills shall be provided.

(e) If in-home respite care is provided in teams, at least one (1) member shall have orientation and basic training and the other member shall be provided:

1. Orientation within two (2) weeks of employment; and
2. Basic training within three (3) months of employment.

Section 8. Participant Records. (1) Records shall be typed or legibly written in ink with each entry dated and signed by the recorder and shall include the recorder's title. Each participant record shall be maintained at the program site and shall contain:

(a) Signed and dated medical summary and care plan, if referred on orders of a physician;

- (b) A completed assessment;
- (c) Signed eligibility statements;
- (d) Application for services;
- (e) Client notification;
- (f) Fee assessment;

(g) An individualized plan of care including specific activities and objectives and signed DSS 1253, Quality Assurance Agreement [Statement], as incorporated by reference into 905 KAR 8:180, prepared by the center director and case manager with the input and agreement of the participant and primary caregiver;

(h) An ongoing record, indicating any changes in the participant's:

1. Objectives and goals;
2. Progress;
3. Physical and mental conditions;
4. Behaviors;
5. Responses;
6. Attitudes;
7. Appetite; or
8. Other changes or observations noted by program staff and case manager;

(i) Emergency contact information including responsible party and personal physician;

(j) Attendance record;

(k) Record of services provided by in-home or other program services;

(l) Signed authorization for participant to receive emergency medical care if necessary;

- (m) Ongoing reassessments and care plans;
- (n) Correspondence; and
- (o) Closing summary.

(2) Licensed day care centers shall maintain records as governed by 902 KAR 20:066.

(3) The service provider shall comply with reporting requirements of the area agency on aging and the Cabinet for Families and Children. [~~Human Resources~~]

DONNA HARMON, MSW, Commissioner

VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: March 26, 1997

FILED WITH LRC: March 27, 1997 at 10 a.m.

CABINET FOR FAMILIES AND CHILDREN
Department for Social Services
Division of Aging Services
(As Amended)

905 KAR 8:180. Homecare program for the elderly.

RELATES TO: KRS 205.010(6), 205.201, 205.203, 205.455-465, 42 USC 3001 et seq.

STATUTORY AUTHORITY: KRS 194.050, 205.204(2), EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: 42 USC 3001 et seq. [~~Older Americans Act of 1965, as amended,~~] authorizes grants to states to provide assistance in the development of new or improved programs for older persons. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Services and the Aging Program under the Cabinet for Families and Children. KRS 194.050 authorizes the Cabinet for Families and Children [~~Human Resources~~] to adopt administrative regulations as necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. KRS 205.204 designates the Cabinet for Families and Children [~~Human Resources~~] as the state agency to administer 42 USC 3001 et seq. [~~the Older Americans Act~~] in Kentucky and promulgate administrative regulations for this purpose. The function of this administrative regulation is to set forth the standards of operation for the homecare program for older persons in Kentucky, in compliance with the statutory requirements of KRS 13A.221 that requires a separate administrative regulation for each topic of general subject matter. [~~This administrative regulation consolidates the provisions of 905 KAR 8:020, 8:110, 8:120, and 8:130 which shall be repealed.~~]

Section 1. Definitions. (1) "Activities of daily living" means activities of self-help: being able to feed, bathe, dress, transfer and toilet oneself.

(2) "Assessment" means the collection of in-depth information about a person's situation and functioning. Assessment shall identify needs and resources so that a comprehensive plan can be made with the client.

(3) "Case management" means a process for ensuring clients receive appropriate, comprehensive and timely services to meet their needs as identified in the assessment by:

- (a) Planning;
- (b) Linking the client to appropriate agencies in the formal and informal caregiving systems;
- (c) Monitoring; and
- (d) Advocacy through the employment of casework activities in order to achieve the best possible resolution to individual needs in the most effective way.

(4) "Homecare services" means those services to eligible individuals directed toward preventing unnecessary institutionalization of functionally impaired older persons and toward maintaining those eligible for services in the least restrictive environment, excluding residential facilities. Homecare services shall include:

- (a) Homemaker;
- (b) Home health aide;
- (c) Chore;
- (d) Home delivered meals;
- (e) Core;
- (f) Escort;
- (g) Home repair; and
- (h) Respite care services.

(5) "Personal care services" means services directed toward maintaining, strengthening or safeguarding the functioning of a person in his home. These services may include:

- (a) Assisting the individual in activities of daily living; and
- (b) Helping to identify and report health needs.

(6) "Home management services" means those services ordinarily involved with housekeeping necessary to maintain a person in his own home. These services may include:

- (a) Shopping;
- (b) Budgeting;
- (c) Meal preparation;
- (d) Laundry; and
- (e) Cleaning.

(7) "Instrumental activities of daily living" means the components identified in home management plus the taking of prescribed medication.

(8) "Reassessment" means the formal reevaluation of the client's situation and functioning and of the services delivered to identify changes which may have occurred since the previous assessment.

Section 2. Service Provider Responsibilities. The service provider contracting to provide homocare services supported in whole or in part from funds received from the Cabinet for Families and Children [~~Human Resources~~] shall:

- (1) Assure the provision of services throughout the geographic area covered under its plan or proposal;
- (2) Justify in the area plan a decision not to fund a defined homocare service, including an assurance of adequate availability from another funding source;
- (3) Treat the client in a respectful and dignified manner, involve the client and caregiver in the delivery of services and provide services in a safe manner;
- (4) Permit staff of the Cabinet for Families and Children [~~Human Resources~~] and the area development districts to monitor and evaluate services provided;
- (5) Assure that each paid or voluntary staff member meets qualification and training standards established for each specific service by the Division of Aging Services, Cabinet for Families and Children [~~Human Resources~~];
- (6) Maintain written job descriptions for staff and volunteer positions involved in direct service delivery;
- (7) Develop and maintain written personnel policies and wage scales for each job category; and
- (8) Designate a supervisor and assure that staff providing homocare services are provided professional supervision.

Section 3. Homecare Plan. For program approval, the area development district shall submit to the Cabinet for Families and Children [~~Human Resources~~] a proposal included in the area plan to include at least the following:

- (1) An assurance of access for the Division of Aging Services to records of the contracting agency pertaining to its contract for delivery of homocare services;
- (2) A plan for the delivery of homocare services in the area to be served by the contracting agency containing:
 - (a) Identification of services currently provided in the district;
 - (b) Identification of uniform procedures for certification and eligibility and case management;
 - (c) Methods for referral for service to other appropriate programs and services;
 - (d) Explanation of volunteer programs to be utilized;
 - (e) Identification of service providers for each specific service;
 - (f) Methods for the periodic monitoring of clients for the appropriateness of service;
 - (g) Unit cost and number of proposed clients for services to be provided directly or by contract;
 - (h) Procedures for the acceptance of voluntary contributions and assurance that income shall be used to maintain or increase the level of service; and
 - (i) Identification of linkages to existing services including adult protective services;
- (3) A plan for implementation of case management responsi-

bilities;

- (4) A description of long- and short-range goals in the provision of approved homocare services;
- (5) A description of the manner in which delivery of services to eligible individuals is to be undertaken;
- (6) A procedure published for monitoring subcontracts for direct services;
- (7) Assurance that assessment for eligibility shall be conducted initially and at least every six (6) months thereafter; and
- (8) Assurance that assessment shall include the following:
 - (a) Physical health;
 - (b) Activities of daily living and instrumental activities of daily living (potential and actual performance);
 - (c) Physical environment and living arrangements;
 - (d) Mental status (cognitive and emotional);
 - (e) Financial resources;
 - (f) Social support and participation; and
 - (g) Current services utilization.

Section 4. Eligibility. (1) Each applicant for homocare services shall file an application for participation and demonstrate that he is a person sixty (60) years of age or older and meets at least one (1) of the following criteria:

- (a) The applicant has functional limitations that require a sheltered environment with provision of social and health related services specific to his activities of daily living and who has been determined impaired in at least:
 - 1. Two (2) physical activities of daily living; or
 - 2. Three (3) instrumental activities of daily living;
- (b) The applicant has a stable medical condition requiring skilled health services along with services related to activities of daily living requiring an institutional level of care; or
- (c) The applicant is currently residing in a skilled nursing facility, an intermediate care facility or a personal care facility and can be maintained at home if appropriate living arrangements and support systems can be established.

(2) Eligibility shall be determined at the initial assessment and at each reassessment. Only individuals who have been trained and meet the qualifications of an assessor or case manager pursuant to Section 5(1) of this administrative regulation shall determine eligibility.

(3) Homocare clients shall be informed that they shall be eligible for services as long as they meet eligibility requirements.

(4) Eligibility determination shall be based upon physical (functional) impairments; however, the assessor and case manager may consider individuals whose deficiencies are caused by mental or emotional impairments including Alzheimer's or other related disorders if these impairments affect physical (functional) capacities.

(5) The assessor or case manager shall determine eligibility for individuals being referred as needing adult day care, adult day health care, Alzheimer's respite care, or in-home services. Use of this procedure may be waived by the Director, Division of Aging Services, Cabinet for Families and Children [~~Human Resources~~], for those area development districts who provide generic assessment and case management.

(6) The homocare program shall not supplant or replace services provided by the client's informal support system. If needs are being met by the informal support system, the client shall be deemed ineligible. An applicant who needs respite services shall not be deemed ineligible as a result of this subsection.

Section 5. Case Management. (1) Case managers shall meet one (1) of the following qualifications:

- (a) A bachelor's degree or master's degree in social work, gerontology, psychology, sociology, or a field relevant to geriatrics, no experience required;
- (b) A bachelor's degree or master's degree in nursing with a current Kentucky nursing license, no experience required;

(c) A bachelor's degree with two (2) years experience in working with the elderly; or

(d) A Kentucky registered nurse with a current Kentucky [nursing] license and [with] two (2) years experience or a licensed practical nurse with a current Kentucky license and three (3) years experience in working with the elderly; and

(e) Volunteer experience working with the elderly shall be counted on an hour-for-hour basis.

(2) Each client shall be assigned a specific case manager.

(3) Clients shall be assessed initially and reassessed every six (6) months thereafter by a person who meets case manager qualifications. After each assessment or reassessment, the Homecare Certification of Eligibility, herein incorporated by reference, shall be completed. If the client is ineligible, the case shall be closed with the reason documented in the case record.

(4) The case manager shall be responsible for arranging and documenting those services provided by other funding sources or volunteers. Reasonable effort shall be made to secure and utilize informal supports for each client.

(5) Case managers shall:

(a) Monitor each client monthly including one (1) home visit with face-to-face contact at least every other month; and

(b) Document in the case record each contact with a client or on behalf of a client.

(6) Case management providers shall assure a minimum of one (1) full-time equivalent case manager for each 100 homecare clients. If the case manager also provides assessment services, his caseload shall not exceed seventy-five (75) clients. Time used to provide agency administration or supervision of other staff shall not be counted toward meeting the full-time equivalency requirement. Two (2) adult day care, adult day health care or Alzheimer's respite care clients may be counted as one (1) for the purpose of determining compliance with this subsection.

(7) Each homecare client shall receive services in accordance with an individualized care plan developed cooperatively with his case manager and revised if appropriate. The plan shall:

(a) Relate to the assessed problem;

(b) Identify the goal to be achieved;

(c) Identify the scope, duration and units of service required;

(d) Identify the source of service;

(e) Include a plan for reassessment; and

(f) Be signed by the client and case manager.

Section 6. Quality Assurance. (1) Upon admission to the homecare program, each client shall:

(a) Read, or have read and explained to him if necessary;

(b) Sign and receive a copy of a completed DSS 1253, Quality Assurance Agreement, herein incorporated by reference. The agreement shall contain the name, address and telephone number of:

1. The current case manager; and

2. The area development district homecare coordinator.

(2) A client call or other contact with the case manager, area development district or Division of Aging Services shall be documented on the DSS 1254, Report of Complaint or Concern, herein incorporated by reference. The identity of the complainant shall be kept confidential if requested.

(3) Copies of written complaints and detailed reports of telephoned or verbal complaints, concerns or service suggestions shall be maintained in the case manager's permanent file. Documentation of investigation and efforts at resolution or service improvement shall be available for monitoring by the area development district and Division of Aging Services staff.

Section 7. Fees and Contributions. (1) The assessor or case manager shall be responsible for determining fee paying status, using the following criteria:

(a) A fee shall not be assessed for the provision of assessment

or case management services.

(b) The assessor or case manager shall consider extraordinary out-of-pocket expenses to determine a client's ability to pay. Waiver or reduction of fee due to extraordinary out-of-pocket expenses shall be documented on the Homecare Authorization Statement for Extraordinary Expenses, herein incorporated by reference.

(c) A fee shall not be assessed an eligible individual who meets the definition of "needy aged" as governed by KRS 205.010(6).

(d) SSI income shall not be deemed available to other family members. The applicant receiving SSI benefits shall be considered a family of one (1) for the purpose of fee determination.

(2) Eligible persons shall be charged a fee determined by the cost of the service unit multiplied by the applicable percentage rate based upon income and size of family as set forth below. Service unit cost shall be determined by the state agency or contracting entity in accordance with its contract.

Homecare Client Income and Applicable Percentage of Fee

Annual Income	1 Person	2 Persons
\$8000 and below	0%	0%
\$8001 - \$10150	20%	0%
\$10151 - \$12300	40%	20%
\$12301 - \$14450	60%	40%
\$14451 - \$16650	80%	60%
\$16651 - \$18850	100%	80%
\$18851 - \$20950		100%
For each additional family member add \$2150.		

(3) Contributions from individuals, families or other entities shall be encouraged. Suggested contribution or donation rates may be established; however, pressure shall not be placed upon the client to donate or contribute. Services shall not be withheld from an otherwise eligible individual based upon his failure to voluntarily contribute to support services.

(4) The area development district shall review and approve the procedures implemented by provider agencies for the collecting, accounting, spending and auditing of fees and donations.

Section 8. Allocation Formula. The homecare program funding formula shall consist of a \$20,000 base for each district, with the remaining amount of funds distributed in proportion to the district's elderly (sixty (60) plus) population in the state.

Section 9. Termination or Reduction of Services. (1) The case manager and the client shall decide to terminate services. Services may be reduced or terminated when:

(a) The client's condition or support system improves; or

(b) A determination is made that the care plan cannot be followed.

(2) If services are terminated or reduced, the case manager shall:

(a) Complete page two (2) of the Application for Homecare Services, Notification to Client, herein incorporated by reference;

(b) Inform the client of his right to file a complaint;

(c) Complete section IV of the DSS 864 Homecare Services, herein incorporated by reference, listing the closure reason; and

(d) Assist the client and family in making referrals to other agencies if applicable.

(3) If services are terminated or reduced due to reasons unrelated to the clients needs or condition, the homecare coordinator, in conjunction with the case manager, shall determine reduction or termination on a case-by-case basis.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Homecare Certification of Eligibility", (12/90), Division of Aging Services;

(b) DSS 1253 "Quality Assurance Agreement", (12/90), Division of Aging Services;

(c) DSS 1254 "Report of Complaint or Concern", (12/90), Division of Aging Services;

(d) "Homecare Authorization Statement for Extraordinary Expenses", (12/90), Division of Aging Services; and

(e) DSS 864 "Homecare Services", (12/90), Division of Aging Services;

(2) This material may be inspected, copied, or obtained at Cabinet for Families and Children, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. [Material incorporated by reference. (1) Forms necessary for the implementation of the homecare program for the elderly shall be herein incorporated by reference.

(2) Material incorporated by reference may be inspected and copied at the Department for Social Services, CHR Building, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.]

DONNA HARMON, MSW, Commissioner

VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: March 26, 1997

FILED WITH LRC: March 27, 1997 at 10 a.m.

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Administration and Development
(As Amended)

907 KAR 1:013. Payments for hospital inpatient services.

RELATES TO: KRS 205.520, 205.565, 205.640, 1996 Ky. Acts ch. 380, Part I, GB, 51, 5 [205.575, 1992 Ky. Acts ch. 462, Part I.G.52.b.2]

STATUTORY AUTHORITY: KRS 194.050, 205.640, [205.460, 1992 Ky. Acts ch. 462, Part I.G.52.b.2,] 20 CFR 405.402 through 405.488, 42 CFR 440.10, 440.140, 447.250 through 447.280, 42 USC 1396a, b, d, r-4, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services [Human Resources] has responsibility to administer the Medicaid Program [of Medicaid Assistance]. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520 authorizes [empowers] the cabinet, by administrative regulation, to comply with a [any] requirement that may be imposed, or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes [sets forth] the method for determining the amount [amounts] payable by the Medicaid Program [cabinet] for a hospital inpatient service [services].

Section 1. Definitions. (1) "Acute care hospital" means a hospital [appropriately] licensed and certified to provide acute care hospital services in accordance with 902 KAR 20:016.

(2) "Base year" means the cost reporting period upon which a rate is based.

(3) "Capital costs" means capital related expenses including insurance, taxes, interest, and depreciation related to plant and equipment.

(4) "Charity care" means a service provided to a recipient by a provider without expectation on the part of the provider to receive payment, but shall not include bad debt.

(5) "Cost basis" means the total allowable Medicaid inpatient cost

incurred by the provider in the base year.

(6) "Department" means the Department for Medicaid Services or its agent.

(7) "Disproportionate share hospital" (DSH) means a hospital that: (a) Meets the criteria established in 42 USC 1396r-4(d); and (b) 1. Meets the criteria established in 42 USC 1396r-4(b); or 2. Has a Medicaid utilization of one (1) percent or higher. [meets the criteria specified in 42 USC 1396r-4(d) and one (1) of the following criteria:

(a) As specified in 42 USC 1396r-4(b); or

(b) A hospital that has a Medicaid utilization of one (1) percent or higher.]

(8) "DRI" means Data Resources, Incorporated.

(9) "Indexing factor" means the amount that the cost of providing a service is expected to increase during the universal rate year.

(10) "Indigent days" means days in excess of fourteen (14) covered days for a Medicaid recipient and days of service provided to an individual eligible for the Kentucky Hospital Care Program, including outpatient equivalent care days, with eligibility determined in accordance with criteria established [shown] in 907 KAR 1:635, and which are uninsured or unreimbursed by another [any other] source.

(11) "Inflation factor" means the amount that the cost of providing a service has increased, or is expected to increase, for a specific period of time.

(12) "Pediatric teaching hospital" is [means a hospital as] defined in KRS 205.565.

(13) "Professional component cost" means a physician compensation cost paid by the provider for a service to a patient and includes the following categories of practice:

(a) Anesthesiology;

(b) Cardiology;

(c) Electroencephalography;

(d) Pathology;

(e) Radiology; and

(f) Psychiatry in a psychiatric hospital [hospitals only].

(14) "Psychiatric hospital" means a hospital which meets the minimum licensure requirements established [as defined] in 902 KAR 20:180.

(15) "Rehabilitation hospital" means a hospital meeting the minimum licensure requirements established [as defined] in 902 KAR 20:240.

(16) "State university teaching hospital" means:

(a) A hospital which is owned or operated by a Kentucky state supported university with a medical school; or

(b) A hospital in which three (3) or more departments or major divisions of the University of Kentucky or University of Louisville medical school are physically located and which are used as the primary (greater than fifty (50) percent) medical teaching facility for the medical students at the University of Kentucky or the University of Louisville; however, this shall not include a hospital having a residency program or rotation agreement.

(17) "Trending factor" means the inflation factor as applied to that period of time between a facility's base fiscal year end and the beginning of the universal rate year.

(18) "Type I hospital status" means an in-state disproportionate share hospital with 100 beds or less that participates in the Medicaid Program.

(19) "Type II hospital status" means an in-state disproportionate share hospital with 101 beds or more that participates in the Medicaid Program, except for a hospital that meets the criteria established in this administrative regulation for [to be defined as] a Type III or Type IV status hospital.

(20) "Type III hospital status" means an in-state disproportionate share state university teaching hospital, owned and operated by either the University of Kentucky or the University of Louisville medical school, that has requested a Type III status which has been approved

by the Department for Medicaid Services.

(21) "Type IV hospital status" means an in-state disproportionate share hospital participating in the Medicaid Program that is a state owned psychiatric hospital.

(22) "Type V hospital status" means an out-of-state disproportionate share hospital participating in the Medicaid Program.

(23) "Universal rate year" means the twelve (12) month period under the prospective payment system, beginning July 1 of each year for which payment rates are established for a hospital regardless of the hospital's fiscal year end.

(24) "Upper payment limit" means the maximum amount the Medicaid program shall pay for an inpatient day of care with the maximum varying based on specified circumstances as follows:

- (a) Utilization factors;
- (b) Teaching hospital status; and
- (c) Age of patient.

(25) "Weighted median" means the cost per diem associated with the median point of cumulative inpatient days calculated by arraying cost per diems within a specified peer group from lowest to highest.

Section 2. Acute Care Hospital, Rehabilitation Hospital and (Mental Hospital (including) Psychiatric Hospital (Facility)) Inpatient Services. The Department for Medicaid Services shall pay for inpatient hospital services provided to an eligible Medicaid recipient [recipients of Medical Assistance] through the use of a rate [rates] that is [are] reasonable and adequate to meet the cost that is [costs that are] required to be incurred by an efficiently and economically operated hospital [hospitals] to provide a service [services] in conformity with applicable state and federal laws, regulations, and quality and safety standards.

~~[Section 2. Establishment of Payment Rates. (1) The policies, methods, and standards to be used by the cabinet in setting payment rates are specified in the cabinet's "Inpatient Hospital Reimbursement Manual" revised November 29, 1993, which is incorporated by reference in this administrative regulation.~~

~~(2) For any reimbursement issue or area not specified in the manual, the cabinet shall apply the Medicare standards and principles (excluding the Medicare inpatient routine nursing salary differential).~~

~~(3) The Kentucky Medical Assistance Program Inpatient Hospital Reimbursement Manual may be reviewed during regular working hours of 8 a.m. to 4:30 p.m. eastern time in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.]~~

~~Section 3. [General Description of the Payment System. The following provisions shall be applicable for purposes of setting inpatient hospital payment rates:~~

~~(1) Use of a Prospective Rate [Rates]. (1) A [Each] hospital shall be paid using a prospective payment rate based on allowable Medicaid inpatient costs and Medicaid inpatient days.~~

~~(a) The prospective rate shall include [be all-inclusive in that] both routine and ancillary costs [cost shall be reimbursed through the rate].~~

~~(b) If [One] a base year is selected for setting a rate, that base year shall not change. [For universal rate years prior to January 1, 1985 the prospective rate shall not be subject to retroactive adjustment except to the extent that an audited cost report alters the basis for the prospective rate or the projected inflation index utilized in setting the individual rate is different from actual inflation as determined by the index being used.]~~

~~(c) [For universal rate years beginning on or after January 1, 1985.] The prospective rate shall not be subject to retroactive adjustment, except for a facility [to the extent that facilities] with a rate based on unaudited data. This facility shall have its [their] rate appropriately revised for the rate year when the audited cost report for the~~

~~base year becomes available to the department [is received from the fiscal intermediary].~~

~~(d) Total prospective payments shall not exceed the total customary charges in the prospective year.~~

~~(2) An overpayment [(e) Overpayments] shall be recouped by:~~

~~(a) [1-By] Payment from the provider for [of] the amount of the overpayment; or~~

~~(b) [2-By] The withholding of the overpayment amount from a future payment [payments] due the provider.~~

Section 4. [(2)] Use of a Universal [uniform] Rate Year. (1) A universal [uniform] rate year shall be set for a facility with the universal [all facilities, with the] rate year established as July 1 through June 30 of each year to coincide with the state fiscal year. [January 1 through December 31 of each year. The first uniform rate year for psychiatric hospitals shall be July 1, 1985 through June 30, 1986; however, effective January 1, 1986 the psychiatric hospital rate year shall be reestablished and shall be January 1 through December 31 of each year thereafter. Changes of rates throughout the rate year as a result of policy changes shall not change the rate year, although the facility rates may change.]

(2) A hospital shall [Hospitals are] not be required to change its [their] fiscal years to conform with a universal rate years.

Section 5. [(3)] Trending of a Cost Report [Reports]. The following policies shall be used for the trending of a cost report:

(1) An allowable Medicaid cost, excluding capital cost, as shown in a cost report [reports] on file in the department [cabinet], both audited and unaudited, shall be trended to the beginning of the rate year [so as] to update a hospital's Medicaid cost. [costs. When trending, capital costs and return on equity capital are excluded.]

(2) The trending factor to be used shall be the inflation factor prepared by DRI [Data Resources, Inc. rate of inflation] for the period being trended.

Section 6. [(4)] Indexing for Inflation. (1) After an allowable cost has [costs have] been trended to the beginning of the rate year, an indexing factor shall be applied [so as] to project inflationary cost in the universal [uniform] rate year.

(2) The [forecasting] indexing factor to be used shall be the inflation factor [currently in use is] prepared by DRI for the universal rate year. [Data Resources, Inc. This policy shall be effective August 3, 1985.]

Section 7. [(5)] Peer Grouping. For rate setting purposes, a hospital shall be grouped with other hospitals in accordance with the following provisions: [Acute care hospitals (but not including those considered to be primarily rehabilitative in nature) shall be grouped with other acute care hospitals according to bed size (referred to as "peer grouping").]

(1) The peer grouping shall be based on the number of beds licensed, as of May 1 preceding the universal rate year, which provide Medicaid covered services and shall meet minimum licensure requirements in accordance with 902 KAR 20:009, 902 KAR 20:006, 902 KAR 20:170, 902 KAR 20:180, 902 KAR 20:230 and 902 KAR 20:240 [and other hospital beds licensed to provide Medicaid covered care pursuant to KRS Chapter 216B].

(2) [(a)] The peer groupings [for the payment system] shall be: 0-50 beds, 51-100 beds, 101-200 beds, 201-400 beds, and 401 beds or more [and up].

(3) A Type III hospital [(b) Designated state teaching hospitals affiliated with or a part of the university of Kentucky and the University of Louisville] shall not be included in the array for a facility [facilities] with 401 beds or more, but shall be subject to the upper limit for a facility with 401 beds or more. [and up unless the facility's primary characteristics are considered essentially the same as the peer group's, and the facility, although not a university teaching hospital as

such, is treated in a manner which recognizes the presence of the major pediatric teaching component existing outside the state university hospitals.]

~~[(e) A facility in the 201-400 peer group shall not have its operational per diem reduced below that amount in effect in the 1982 rate year as a result of the establishment of a peer grouping of 401 beds and up.]~~

~~[(4) A ~~[(d)]~~ psychiatric hospital ~~[hospitals]~~ shall not be peer grouped but shall be in ~~[have]~~ a separate array of psychiatric hospitals ~~[only]~~.~~

~~[(5) A ~~[(e)]~~ rehabilitation hospital ~~[hospitals]~~ and an acute care hospital that is restricted to providing ~~[only]~~ rehabilitation services ~~[hospitals considered to be primarily rehabilitative in nature]~~ shall not be:~~

- ~~(a) Peer grouped; ~~[or]~~~~
- ~~(b) Arrayed; or~~
- ~~(c) Subject to the operating cost upper limit.~~

~~Section 8. ~~[(6) Use of a]~~ Minimum Occupancy Factor. Allowable Medicaid capital cost shall be reduced if one (1) of the following minimum occupancy factors are not met: ~~[A minimum occupancy factor shall be applied to capital costs attributable to the Medicaid Program.]~~~~

~~(1) A sixty (60) percent occupancy factor shall apply to hospitals with 100 or fewer beds; or~~

~~(2) A seventy-five (75) percent occupancy factor shall apply to a hospital ~~[facilities]~~ with 101 or more beds. ~~[Capital costs are interest and depreciation related to plant and equipment.]~~~~

~~Section 9. ~~[(7) Use of a]~~ Reduced depreciation allowance shall be applicable, as follows:~~

~~(1) The allowable amount for depreciation on building and fixtures, excluding ~~[(not including)]~~ major movable equipment~~[(s)]~~, shall be sixty-five (65) percent of the reported depreciation amount as shown in the hospital's cost reports.~~

~~(2) The use of a reduced depreciation allowance shall ~~[is]~~ not be applicable with regard to a psychiatric hospital ~~[hospitals]~~.~~

~~Section 10. ~~[(8) Use of]~~ Upper limits and payment principles ~~[with regard to services provided on or after November 20, 1993.~~~~

~~(a) The following upper limits and payment principles shall apply to a hospital, ~~[all hospitals]~~ with additional ~~[either]~~ limitations for a disproportionate share hospital established ~~[as defined]~~ in Section 11 of this administrative regulation, as follows: ~~[hospitals shown in paragraph (b) of this subsection.]~~~~

~~(1) An ~~[(1-a)(i) For]~~ acute care hospital with 101 beds or more shall have ~~[hospitals except hospitals with 100 beds or less,]~~ an upper limit ~~[shall be]~~ established on all costs (except Medicaid capital costs and professional component costs) at the weighted median per diem cost for a hospital ~~[hospitals]~~ in each peer group~~[(s)]~~, using the most recent Medicaid cost report available as of December 1 of each year.~~

~~(2) An ~~[(ii) For]~~ acute care hospital ~~[hospitals]~~ with 100 beds or less shall have the upper limit on all costs (except Medicaid capital costs and professional component costs) ~~[shall be]~~ established at 110 percent of the weighted median per diem for a hospital ~~[hospitals]~~ in its ~~[the]~~ peer group~~[(s)]~~, using the most recent Medicaid cost report available as of December 1 of each year.~~

~~(3) A state university teaching hospital shall have an upper limit on all costs (except Medicaid capital costs and professional component costs) established at 106 percent of the weighted median per diem for a hospital ~~[hospitals]~~ in its peer group;~~

~~(4) A ~~[(b) For]~~ psychiatric hospital ~~[hospitals]~~;~~

~~(a) Shall have an upper limit ~~[shall be]~~ established on all costs (except Medicaid capital costs and professional component costs) at the weighted median per diem cost for a hospital ~~[hospitals]~~ in the array;~~

~~(b) ~~[A psychiatric hospital]~~ Designated by the department ~~[cabinet]~~~~

as a primary referral and services resource for a child ~~[children]~~ in the custody of the Cabinet for Families and Children shall be exempt from the upper limit for the array and shall be paid at actual projected cost with no year end settlement to actual cost; and

~~(c) May have the projected cost ~~[may be]~~ adjusted for usual cost of living increases using the DRI ~~[Data Resources, Incorporated]~~ Index.~~

~~(5) Except as provided ~~[for]~~ in subsection (10) of this section the following principles shall apply:~~

~~(a) The most recent Medicaid cost report available as of May 1 of each year preceding the universal rate year shall be used for rate setting.~~

~~(b) If a desk review or audit of the most current cost report is completed after May 1, but prior to the universal rate setting for the year, the desk review or audited data shall be utilized for rate setting.~~

~~(c) An audit and desk review shall be conducted in accordance with the Medicaid Reimbursement Manual for Hospital Inpatient Services.~~

~~1. Except as provided in subparagraph 2 of this paragraph, the manual shall govern the Medicaid reimbursement for a hospital inpatient service.~~

~~2. If a reimbursement issue or area is not specified in the manual, the department shall apply Medicare standards and principles, excluding the Medicare inpatient routine nursing salary differential.~~

~~(6) After ~~[(e) Upon]~~ being set, the arrays and upper limits shall not be altered due to a revision or correction ~~[revisions or corrections]~~ of data ~~[(however the arrays or upper limits may be changed as a result of changes of agency policy)]~~.~~

~~(7) Professional component costs shall be trended and indexed separately in the same manner as operating costs, except an upper limit shall not be established.~~

~~~~[(d) Disproportionate share hospitals shall also receive, in addition to regular program payments, disproportionate share hospital payments as described in the Reimbursement Manual at Section 402C.]~~~~

~~(8) A ~~[(e)]~~ provider tax ~~[taxes]~~ shall be considered an allowable cost. The ~~[but only that]~~ portion attributable to Medicaid utilization shall be included in the per diem rate. ~~[For the rate period beginning November 20, 1993, the allowable cost of the tax shall be added to the hospital rate with no effects and without regard for usual upper limits. For subsequent rate periods the cost (excluding, effective March 1, 1994, any per diem rate adjustments for the prior rate period relating to provider taxes) shall be shown in the appropriate cost report with adjustment as necessary to reflect an annual amount.]~~~~

~~(9) Except as provided ~~[indicated]~~ in subsection (10) of this section, the following controls shall be applied to the per diem rate increases for an acute care hospital excluding a hospital restricted to rehabilitative ~~[(except for one providing only rehabilitation)]~~ services:~~

~~(a) ~~[(f)]~~ Allowable rate ~~[cost]~~ growth from the prior rate ~~[base]~~ year to the new rate ~~[base]~~ year shall be limited to not more than one and one-half (1 1/2) times the DRI ~~[Data Resources, Inc.]~~ inflation amount for the same time period;~~

~~(b) Limits shall be applied to the ~~[by component (capital and operating cost per diem components)]~~ only;~~

~~(c) Rate ~~[(g)]~~ cost growth beyond the allowable amounts shall be considered an unallowable cost for rate setting purposes; and~~

~~(d) Unallowable costs resulting from the use of control of rate increase limits shall not be included in the base for future rate setting purposes.~~

~~(10) For the rate period beginning July 1, 1997, the rate shall be the rate in effect for January 1, 1996 with the following modifications:~~

~~(a) The operating and professional components of the rate shall be indexed forward for the 1998 rate period using the inflation factor prepared by DRI for the same period;~~

~~(b) There shall be an add on to the rate, computed as fifteen (15)~~

percent of the amount between the lesser of:

1. The operating cost per diem or the maximum operating per diem, whichever is less; or

2. The operating per diem as limited by the rate of increase control (one and one-half (1 1/2) times the DRI); and

(c) The capital component shall not be indexed. ~~[; however,]~~ The capital component of the rate shall be the amount computed for capital cost in the 1996 individual hospital rate notice, excluding the application of the rate of increase control (one and one-half (1 1/2) times the DRI).

(11) ~~[2-]~~ For a medically necessary hospital inpatient service ~~[services]~~ provided for an ~~[to infants under the age of one (1) with]~~ exceptionally high cost ~~[costs]~~ or long length ~~[lengths]~~ of stay ~~[(defined as being those costs and days of stay which for newborns are after thirty (30) days beyond the date of discharge for the mother of the child and for all other infants are after thirty (30) days from the date of admission)]~~, the payment rate shall be set at 110 percent of the per diem payment rate, without regard to length of stay or number of admissions of the infant ~~[infants]~~. Exceptionally high cost or long length of stay shall be, in a nondisproportionate share hospital, those cost and days of stay for a child under age one (1) that:

(a) For a newborn, is thirty (30) days from the date of discharge for the mother; or

(b) For another ~~[any other]~~ child, is after thirty (30) days from the date of admission.

Section 11. ~~[(b)]~~ The following upper limits and payment principles shall apply to a disproportionate share hospital ~~[as defined in subsection (9) of this section]~~:

(1) An ~~[4-]~~ acute care hospital with Medicaid utilization of twenty (20) percent or higher, or a hospital ~~[and hospitals]~~ having twenty-five (25) percent or more nursery ~~[nursing]~~ days resulting from Medicaid covered deliveries as compared to the total number of paid Medicaid days, shall have an upper limit set at 120 percent of the weighted median per diem cost for a hospital ~~[hospitals]~~ in that peer grouping ~~[the array. In addition to the per diem amount computed in this manner, the hospitals shall be paid (as appropriate) additional amounts for services to children under age six (6) as shown in subsection (9)(b)2 of this section. These hospitals shall also be entitled to disproportionate share hospital payments in accordance with KRS 205.640 and Section 102C of the Reimbursement Manual.]~~

(2) A ~~[2-]~~ Designated state university teaching hospital, having Medicaid utilization of twenty (20) percent or higher, or having twenty-five (25) percent or more nursery days resulting from Medicaid covered deliveries as compared to the total number of paid Medicaid days, ~~[and major-affiliated pediatric teaching hospitals (i.e., those affiliated with or a part of the University of Kentucky and the University of Louisville)]~~ shall have an upper limit set at 126 percent of the weighted median per diem cost for a hospital ~~[all other] [hospitals]~~ of ~~[comparable size (401 beds and up)]~~.

(3) A designated state pediatric teaching hospital meeting the criteria in subsection (2) of this section shall:

(a) Have an upper limit set at 126 percent of the weighted median per diem cost of its appropriate peer group; and

(b) ~~[(The designated state pediatric teaching hospitals shall also be paid.)]~~ In addition to the hospital's ~~[facilities']~~ base rate, be paid an amount which is equal to two (2) percent of the base rate for each one (1) percent of Medicaid occupancy but this amount shall not exceed the prospective reasonably determined uncompensated Medicaid cost to the hospital ~~[facility]~~. ~~[In addition to the per diem amount computed using the limits specified in this subparagraph, the hospitals shall be paid (as appropriate) additional amounts for services to children under age six (6) as shown in subsection (9)(b)2 of this section. These hospitals shall also be entitled to disproportionate share hospital payments in accordance with KRS 205.640 and Section 102C of the Reimbursement Manual.]~~

(4) ~~[3-]~~ Psychiatric hospitals with Medicaid utilization of thirty-five

(35) percent or higher shall have an upper limit set at 115 percent of the weighted median per diem cost for a hospital ~~[hospitals]~~ in the array. ~~[(The hospitals shall also be entitled to disproportionate share hospital payments in accordance with KRS 205.640 and Section 102C of the Reimbursement Manual.)]~~

(5) An acute care hospital with 100 beds or less shall have an upper limit set at 110 percent of the weighted median per diem for a hospital ~~[hospitals]~~ in the array.

(6) Another ~~[Any [4- All] other]~~ disproportionate share acute care hospital shall have ~~its [their]~~ upper limit set at the weighted median per diem of the cost for a hospital ~~[hospitals]~~ in the peer grouping ~~[array]. [In addition to the per diem amount computed in this manner, the hospitals shall be paid (as appropriate) additional amounts for services to children under age six (6) (as shown in subsection (9)(b)2 of this section). These hospitals shall also be entitled to disproportionate share hospital payments in accordance with KRS 205.640 and Section 102C of the Reimbursement Manual.]~~

(7) A hospital shall be reimbursed an additional amount equal to 110 percent of a hospital's per diem rate for medically necessary hospital inpatient days of service provided for an exceptionally high cost or long length of stay, without regard to length of stay or number of admissions of the child. Exceptionally high cost or long length of stay shall be, in a disproportionate share hospital, those costs and days of stay for a child under the age of six (6) that:

(a) For a newborn, is thirty (30) days beyond the date of discharge for the mother; or

(b) For another ~~[any other]~~ child, is after thirty (30) days from the date of admission.

(8) The disproportionate share hospital payment for the period beginning February 20, 1995 shall be made as follows:

(a) The disproportionate share hospital payment for a Type I and Type II hospital shall include a volume adjustment.

1. The adjustment shall be made by paying for each indigent care day, including equivalent days based on outpatient services actually provided, at the hospital's Medicaid per diem rate.

2. Total disproportionate share volume adjustment payments to a Type I and Type II hospital for indigent care services provided during the 1998 fiscal year shall not exceed \$91,900,000. If a payment ~~[payments]~~ will cause the limit to be exceeded, each hospital's volume adjustment amount shall be adjusted proportionately.

3. The inpatient equivalent care days for a hospital shall be determined by dividing the hospital's average Medicaid allowable outpatient payment per visit by the Medicaid allowable inpatient payment per day and multiplying the result by the number of indigent care outpatient visits for the specified period of time.

(b) The disproportionate share hospital payment for a Type III and IV hospital shall be equal to 100 percent of the cost of services to a Medicaid patient, less the amount paid by Medicaid as a usual Medicaid per diem payment, plus the cost of services to an uninsured patient, less any cash payment made by an uninsured patient. Type III status shall be granted to a state university teaching hospital if the hospital agrees as a part of its request for a Type III status to:

1. Forego a ~~[any]~~ local or state government contribution for charity care; and

2. ~~[(To)]~~ Provide up to 100 percent of the state matching funds necessary to secure federal financial participation for a Medicaid disproportionate share hospital payment to be made during the period of time the hospital is designated as a Type III status hospital.

(c) The disproportionate share hospital payment for a Type V hospital shall be one (1) dollar per Medicaid day plus an earned adjustment which is equal to ten (10) cents for each one (1) percent of Medicaid occupancy above one (1) standard deviation.

~~[(9) Disproportionate share hospitals.]~~

~~(a) Disproportionate share hospitals are those hospitals meeting the criteria specified in 42 USC 1396r 4(b) and (d) and those hospitals which may not meet the criteria but meet the criteria~~

specified in 42 USC 1396r-4(d) and meet this additional criteria:

1. Acute care hospitals with Medicaid utilization of twenty (20) percent or higher and psychiatric hospitals with Medicaid utilization of thirty five (35) percent or higher;

2. Hospitals which are designated state teaching hospitals;

3. Hospitals which are designated major pediatric teaching hospitals;

4. Hospitals having twenty five (25) percent or more nursery days resulting from Medicaid covered deliveries as compared to the total number of paid Medicaid days; and

5. Effective with regard to services provided on or after July 1, 1990, hospitals not meeting the additional criteria specified in subparagraphs 1 through 4 of this paragraph but with Medicaid utilization of one half (1/2) of one (1) percent or higher.

(b) The upper limit for payments for hospitals in Kentucky shall be set at the lower of allowable Medicaid cost or the median of the facility array of allowable cost with payment adjustments allowed for hospitals deemed disproportionate share hospitals in accordance with subsections (8) and (9) of this section. For compliance with 42 USC 1396r-4(e), the minimum payment adjustment and actual payment adjustment shall be computed in the following manner:

1. For the period ending June 30, 1994, the following policy shall be in effect:

a. Each disproportionate share hospital shall be paid a minimum disproportionate share payment amount for the type of hospital plus any earned adjustment to which the hospital is entitled. The hospital types, minimum payment amounts, and earned adjustments shall be as follows and shall only remain in effect for the period ending June 30, 1994:

(i) Type I hospitals shall be those acute care and psychiatric in-state hospitals serving a federally designated medically underserved area, a federally designated health manpower shortage area, or a primary care physician shortage area designated under the rural Kentucky medical scholarship fund, when the hospital has fifty (50) beds or less. Minimum amount: ninety five (95) dollars per Medicaid day.

(ii) Type II. These hospitals shall be described in the same manner as Type I, except these hospitals have fifty one (51) beds to 100 beds. Minimum amount: seventy (70) dollars per Medicaid day.

(iii) Type III. These hospitals shall be described in the same manner as Type I except these hospitals have 101 beds to 200 beds and include rehabilitation hospitals. Minimum amount: fifty five (55) dollars per Medicaid day.

(iv) Type IV. These hospitals shall be described in the same manner as Type I except these hospitals have 201 or over beds and include rehabilitation hospitals. Minimum amount: forty five (45) dollars per Medicaid day.

(v) Type V. All acute care and psychiatric in-state hospitals with 100 beds and under except those described as Type I or II. Minimum amount: forty five (45) dollars per Medicaid day.

(vi) Type VI. All acute care, rehabilitation and psychiatric in-state hospitals with 101 beds to 200 beds except those that are Type III. Minimum amount: thirty five (35) dollars per Medicaid day.

(vii) Type VII. These hospitals shall be described in the same manner as Type I, except the type shall be limited to rehabilitation hospitals. Minimum amount: ninety five (95) dollars per Medicaid day.

(viii) Type VIII. These hospitals shall be described in the same manner as Type II, except the type shall be limited to rehabilitation hospitals. Minimum amount: seventy (70) dollars per Medicaid day.

(ix) Type IX. All rehabilitation hospitals, with 100 beds and under except those described as Type VII or VIII. Minimum amount: forty five (45) dollars per Medicaid day.

(x) Type X. All other in-state hospitals. Minimum amount: ten (10) dollars per Medicaid day.

(xi) Type XI. All out of state hospitals. Minimum amount: one (1) dollar per Medicaid day.

b. (i) Each Type I through Type X hospital shall have the opportunity

for an earned payment adjustment based on the provision of indigent care (i.e., care provided to Medicaid recipients beyond the Medicaid covered days or to individuals or families with income under the poverty level).

(ii) For the period of July 1, 1993 through June 30, 1994, the earned adjustment shall equal ten (10) dollars for each indigent day of care provided plus an amount equal to the cost of the indigent care (at Medicaid rates) provided by the hospital for which there has been no direct or indirect payment (i.e., where the cost of the care has not been paid or cost shifted to other payers) with an adjustment to account for outpatient services so the total indigent care per diem rate shall be up to but not in excess of 140 percent of the Medicaid per diem rate.

(iii) A hospital shall be presumed to have received payment for indigent care to the extent that other patient revenues exceed other patient costs, and to the extent that direct or other indirect payments are made to the hospital for the indigent care.

(iv) A one (1) time disproportionate share payment shall be paid as appropriate for the period of June 15, 1994 through June 30, 1994 to those hospitals qualifying under the following formula:

i. The amount of disproportionate share indigent care payments earned by the hospital using the formula in effect during the period of July 1, 1993 through June 30, 1994 shall be compared to an amount which is derived by computing the amount of earnings that would have been realized during the period of July 1, 1993 through June 30, 1994 using the revised formula taking effect on July 1, 1994 (shown in subparagraph 2 of this paragraph); the one (1) time payment amount shall be the amount (if any) by which the amount derived by using the formula effective July 1, 1994 exceeds the actual amount earned under the formula which was in effect; and

ii. If the one (1) time payments would cause the total of all disproportionate share payments to exceed \$81,000,000 for the period of July 1, 1993 through June 30, 1994, all one (1) time payments shall be reduced proportionately so the total amounts of disproportionate share payments for the period of July 1, 1993 through June 30, 1994 shall equal but not exceed \$81,000,000.

(v) Any acute care disproportionate share hospital with 100 beds or less whose July 1, 1993, or January 1, 1994, per diem payment rate is less than the April 1, 1993 rate paid as of June 30, 1993, and also less than full allowable per diem costs for the services provided by the hospital as of July 1, 1993, or January 1, 1994, respectively, shall receive an adjustment to the hospital's disproportionate share minimum payment for the period March 1, 1994 through June 30, 1994. The payment adjustment for an acute care hospital shall be determined by multiplying the number of the hospital's Medicaid days as follows:

i. For services provided for the July 1, 1993 through December 31, 1993 period by the difference between the hospital's July 1, 1993 payment rate and the April 1, 1993 rate as paid on June 30, 1993 not to exceed allowable cost; and

ii. For services provided for the January 1, 1994 through June 30, 1994 period by the difference between the hospital's January 1, 1994 payment rate and the April 1, 1993 rate as paid on June 30, 1993 not to exceed allowable cost.

(vi) Any acute care or psychiatric disproportionate share hospital of 100 beds or less shall receive an additional disproportionate share hospital payment of \$200,000 for the period March 1, 1994 through June 30, 1994. This payment shall be made in two (2) equal installments of \$100,000 each with the first payment amount to be paid on or before March 31, 1994 and the second payment amount to be paid on or before June 30, 1994.

e. Each Type XI hospital shall qualify for an earned adjustment which is equal to ten (10) cents for each one (1) percent of Medicaid occupancy above one (1) standard deviation.

2. The disproportionate share hospital payments for the period beginning July 1, 1994 and thereafter shall be made by paying for each indigent care day, including equivalent days based on outpatient

services actually provided, at the hospital's Medicaid per diem rate (except that total disproportionate share payments for indigent care services provided during the 1995 fiscal year shall not exceed \$81,000,000; if payments will cause the limits to be exceeded, all hospitals earned amounts shall be adjusted proportionately). The inpatient equivalent care days for each hospital shall be determined by dividing the hospital's average Medicaid allowable outpatient payment per visit by the Medicaid allowable inpatient payment per day and multiplying the result by the number of indigent care outpatient visits for the specified period of time.

3. Effective with regard to medically necessary hospital inpatient services provided by all Kentucky disproportionate share hospitals on or after July 1, 1991 to children under the age of six (6) with exceptionally high costs or long lengths of stay (defined as being those costs and days of stay which for newborns are after thirty (30) days beyond the date of discharge for the mother of the child and for all other children are after thirty (30) days from the date of admission), the payment rate shall be set at 110 percent of the per diem payment rate, without regard to length of stay or number of admissions of the children.

(10) Operating costs shall not include professional (physician) costs for purposes of establishing the median-based upper limits. Professional costs shall be trended separately.

(11) Hospitals whose general characteristics are not those of an acute care or psychiatric hospital (i.e., because they are rehabilitation hospitals or acute care hospitals considered to be primarily rehabilitative in nature) are not subject to the operating cost upper limits.

(12) Rate appeals. As specified in the Inpatient Hospital Reimbursement Manual, hospitals may request an adjustment to the prospective rate with the submittal of supporting documentation. The established appeal procedure allows a representative of the hospital group to participate as a member of the rate review panel.

Section 12. In accordance with KRS 205.640, except for nonemergency care rendered through a hospital emergency room, an in-state nondisproportionate share hospital shall be compensated in the manner described in Section 11(8)(a) of this administrative regulation for services provided by the hospital to a Medicaid recipient beyond the covered days and to an individual and family with a total annual income and resources up to 100 percent of the federal poverty level, except for nonemergency care rendered through a hospital emergency room, in accordance with KRS 205.640.

Section 13. [4.] Payment to a Participating Out-of-state Hospital.

(1) A [Effective with regard to services provided on or after July 1, 1990] participating out-of-state hospital shall be reimbursed for covered inpatient services rendered to an eligible Kentucky Medicaid recipient at the lesser [rate] of seventy-five (75) percent of usual and customary charges or [up to] the in-state per diem upper limit for a comparable size hospital, plus a provision for capital cost. The capital cost provision shall be [is] computed by using the mean value of the capital cost per diem paid per peer group for an in-state hospital [hospitals]. [except as specified in subsection (2) of this section.]

(2) A [Effective with regard to medically necessary hospital inpatient services provided on or after July 1, 1991 to infants under the age of one (1), and for children under the age of six (6) in disproportionate share hospitals (determined in the same manner as for in-state hospitals except that out-of-state hospitals are not included in facility arrays), for days of stay which for newborns are after thirty (30) days beyond the date of discharge for the mother of the child and for all other children are after thirty (30) days from the date of admission,] participating out-of-state hospital shall be reimbursed [paid] at the lesser [rate] of eighty-five (85) percent of usual and customary charges or [actual billed charges up to] 110 percent of the [per diem upper limit for the] in-state per diem upper limit for a comparable size hospital for an [peer group for comparably

sized hospitals in recognition of] exceptionally high cost or long length [costs and lengths] of stay related to an infant under the age of one (1) in a nondisproportionate share hospital; or [and] a child [children] under age six (6) in disproportionate share hospitals, without regard to length of stay or number of admissions of the infant or child [and children]. Exceptionally high cost or long length of stay shall be those cost and days of stay:

(a) In a nondisproportionate share hospital, as defined in Section 10(11) of this administrative regulation; and

(b) In a disproportionate share hospital, as defined in Section 11(7) of this administrative regulation.

(3) Except as provided in subsection (2) of this section, disproportionate status shall be reimbursed in accordance with Section 11(1) and (8)(c) of this administrative regulation. [Disproportionate status shall be reimbursed in accordance with Section 11(1) and (8)(c) of this administrative regulation, except as otherwise indicated in subsection (2) of this section.]

(4) [Effective with regard to services provided on or after February 1, 1991:] Professional costs [i.e., physician fees] for [all] covered days of stay shall be paid at seventy-five (75) percent of the usual and customary charges of the provider.

Section 14. Provider Appeal Rights. If appealed, negative action shall [may] be appealed in accordance with 907 KAR 1:671.

Section 15. Incorporation [Incorporated] by Reference. (1) [The] "Medicaid Reimbursement Manual for Hospital Inpatient Services", July 1997 edition, Department of Medicaid Services, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

[(3) For a reimbursement issue or area not specified in the manual, the department shall apply Medicare standards and principles, excluding the Medicare inpatient routine nursing salary differential.]

[Section 5. Except as otherwise specified the changes shown in this administrative regulation shall be effective with regard to services provided on or after November 20, 1993.]

JOHN H. MORSE, Commissioner, Secretary  
APPROVED BY AGENCY: April 14, 1997  
FILED WITH LRC: April 15, 1997 at 10 a.m.

CABINET FOR HEALTH SERVICES  
Department for Medicaid Services  
(As Amended)

907 KAR 1:028. Other laboratory and x-ray services.

RELATES TO: KRS 205.520, 42 CFR 440.30, 493, 42 USC 1396d

STATUTORY AUTHORITY: KRS 194.050, 205.520(3) [42 CFR 440.30, 493, 42 USC 1396(d)], EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, (Human Resources) has responsibility to administer the Medicaid Program. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520 authorizes [empowers] the cabinet, by administrative regulation, to comply with a [any] requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the [sets forth the provisions relating to] other

laboratory and x-ray services for which payment shall be made by the Medicaid Program in behalf of both the categorically needy and medically needy.

Section 1. Covered Services. (1) A laboratory service [services] provided by a participating independent laboratory shall be limited to those procedures:

(a) For which the laboratory is certified under Medicare and in accordance with 907 KAR 1:575; and

(b) [when] Prescribed by a physician, podiatrist, [or] dentist, optometrist, or a person authorized by the physician, podiatrist, [or] dentist, or optometrist, if [as long as] the physician, podiatrist, [or] dentist, or optometrist approved the service.

(2) X-ray services (radiological services including [which include but are not limited to] x-rays, ultrasound, computer assisted tomography and magnetic resonance imaging) shall be limited to those procedures provided by a facility licensed to provide radiological services and which meets the requirements of 42 CFR 440.30 with the following limitations: [as limited herein:]

(a) The facility shall participate in the Medicare Program;

(b) The procedure [procedures] shall be ordered by a licensed physician, oral surgeon, [or] dentist, podiatrist, optometrist or a person authorized by the physician, oral surgeon, dentist, [or] podiatrist, or optometrist, if [as long as] the physician, oral surgeon, dentist, [or] podiatrist, or optometrist approved of the service;

(c) The service [services] shall be provided under the direction or supervision of a licensed physician; and

(d) The facility shall meet the requirements of 42 CFR Part 493 with regard to laboratory certification, registration or other accreditation as appropriate.

Section 2. Incorporation [Material Incorporated] by Reference.

(1) [The] "Independent Laboratory and Other Lab and X-ray Services Manual", [dated] August 1996 edition, Department of Medicaid Services, is [shall be] incorporated by reference [in this administrative regulation].

(2) It may be inspected, copied, or obtained at [The manual shall be on file in] the Office of the Commissioner, Department for Medicaid Services, Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

[(3) The manual shall be available for review during the normal business week, Monday through Friday, 8 a.m. through 4:30 p.m. (eastern standard time), excluding state holidays.

[(4) Each participating provider shall be provided one (1) copy of the manual and appropriate manual updates following their incorporation by reference. Additional copies may be obtained from the Department for Medicaid Services upon payment of an appropriate fee in accordance with KRS 61.872.] [The amendments to Section 1 of this administrative regulation shall be effective with regard to services provided on or after December 1, 1992.]

JOHN H. MORSE, Commissioner and Secretary

APPROVED BY AGENCY: May 5, 1997

FILED WITH LRC: May 6, 1997 at 10 a.m.

CABINET FOR HEALTH SERVICES  
Department for Medicaid Services  
Division of Administration and Development  
(As Amended)

907 KAR 1:038. Hearing and vision program services.

RELATES TO: KRS 205.520, 42 CFR 440.140, 441.30, 42 USC 1396a, b, d

STATUTORY AUTHORITY: KRS 194.050[, 42 CFR 440.140,

441.30, 42 USC 1396a, b, d], EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services [Human Resources] has responsibility to administer the program of Medical Assistance. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520 authorizes [empowers] the cabinet, by administrative regulation, to comply with a [any] requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes [sets forth the provisions relating to] the hearing services and vision program [care] services for which payment shall be made by the Medicaid Program for [in behalf of] both categorically needy and medically needy.

Section 1. Hearing Services. (1) Audiological benefits. Coverage shall be limited to the following services provided to a child [children] under age twenty-one (21) by a certified audiologist [audiologists]:

(a) Complete hearing evaluation;

(b) Hearing aid evaluation;

(c) A maximum of three (3) follow-up visits within the six (6) month period immediately following fitting of a hearing aid, the visits to be related to the proper fit and adjustment of that hearing aid;

(d) One (1) follow-up visit six (6) months following fitting of a hearing aid, to assure patient's successful use of the aid.

(2) Hearing aid benefits. Coverage shall be provided to a child [children] under age twenty-one (21) [on a preauthorized basis] for a [any] monaural hearing aid model recommended by a certified audiologist if the model is available through a participating hearing aid dealer. A binaural hearing aid [aids] shall not be covered.

Section 2. Vision Program [Care] Services. Coverage for all age groups shall be limited to prescription services, repair services made to a frame or lens [frames and lenses], and diagnostic services provided by an ophthalmologist or optometrist [ophthalmologists and optometrists], to the extent the optometrist is licensed to perform the service and the service is [services and to the extent the services are] covered in the ophthalmologist portion of the physician's program. Medicaid shall use the current procedural terminology codes as referenced in 907 KAR 3:005. Eyeglasses shall be provided to a child [children] under age twenty-one (21) [only], on a preauthorized basis. Coverage for eyeglasses shall be limited to two (2) pairs of eyeglasses per year per person. This limitation includes the initial eyeglasses and one (1) replacement per year or two (2) replacements per year.

Section 3. Incorporation [Material Incorporated] by Reference.

(1) [Vision Services Manual. The vision services manual specifies the conditions for participation, services covered, and limitations for the vision services component of the Medicaid Program.] [The] "Vision Program [services] Manual", [dated] February [1], 1997, edition, Department for Medicaid Services, is incorporated by reference. [shall be [October 1, 1993,] incorporated by reference in this administrative regulation.] [may be reviewed during regular working hours (8 a.m. to 4:30 p.m. EST)]

(2) It may be inspected, copied, or obtained at [The manual shall be on file in] the Office of the Commissioner, Department for Medicaid Services, Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

[(3) The manual shall be available for review during the normal business week, Monday through Friday, 8 a.m. through 4:30 p.m. (eastern standard time), excluding state holidays.

[(4) Each participating provider shall be provided one (1) copy of the manual and appropriate manual updates following their incorporation by reference. Additional copies may be obtained from the

~~Department for Medicaid Services in accordance with KRS 61.872.]~~  
~~[Copies may also be obtained from that office upon payment of an~~  
~~appropriate fee which shall not exceed approximate cost.]~~

JOHN H. MORSE, Commissioner and Secretary  
 APPROVED BY AGENCY: April 7, 1997  
 FILED WITH LRC: April 10, 1997 at 4 p.m.

**CABINET FOR HEALTH SERVICES**  
**Department For Medicaid Services**  
**Division of Administration and Development**  
**(As Amended)**

907 KAR 1:405. Repeal of 907 KAR 1:404.

RELATES TO: KRS ~~[43A.340,]~~ 205.520  
 STATUTORY AUTHORITY: KRS ~~[43A.340,]~~ 194.050, 205.520(3),  
 EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520 authorizes [empowers] the cabinet, by administrative regulation, to comply with a requirement [any requirements] that may be imposed, or opportunity presented, by federal law for the provision [provisions] of medical assistance to Kentucky's indigent citizenry. This administrative regulation repeals [acts specifically to repeal] 907 KAR 1:404 which is no longer needed because the manual that was incorporated by reference in that administrative regulation is now included in a new manual incorporated by reference in 907 KAR 1:028.

Section 1. 907 KAR 1:404, Incorporation by reference of the independent laboratory services manual, is hereby repealed.

JOHN H. MORSE, Commissioner, Secretary  
 APPROVED BY AGENCY: March 10, 1997  
 FILED WITH LRC: March 12, 1997 at 11 a.m.

**CABINET FOR HEALTH SERVICES**  
**Department for Medicaid Services**  
**Division of Administration and Development**  
**(As Amended)**

907 KAR 1:631. Reimbursement of Vision Program ~~[care]~~ services.

RELATES TO: KRS 205.520, 42 CFR 440.40, 440.60, 447 Subpart B, 42 USC 1396a-d

STATUTORY AUTHORITY: KRS 194.050~~], 42 CFR 440.40, 440.60, 447 Subpart B, 42 USC 1396a-d]~~, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services ~~[Human Resources]~~ has responsibility to administer the Medicaid Program. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520 authorizes [empowers] the cabinet, by administrative regulation, to comply with a [any] requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes [sets forth] the method for determining a reimbursement [establishing reimbursements] ~~[determining amounts]~~

payable by the cabinet] for a Vision Program service [care services].

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designee.

(2) "Resource-based relative value scale (RBRVS) unit" means a value based on the service which takes into consideration the practitioners' work, practice experience, liability insurance, and a geographic factor based on the prices of staffing and other resources required to provide the service in an area relative to national average price [current procedural terminology (CPT) codes established by the American Medical Association assigned to the service].

~~[(3) [For purposes of determination of payment the following definition shall be applicable:] "Usual and customary charge" means the uniform amount the individual optometrist or ophthalmic dispenser charges in the majority of cases for a specific covered procedure or service.]~~

Section 2. Reimbursement for Covered Procedures and Materials for Optometrists. (1) Reimbursement for a covered service [services], within the optometrist's scope of licensure, except materials or a [and] laboratory service [services], shall be based on the optometrist's usual and customary actual billed charges up to the fixed upper limit per procedure established by the department using the [a] Kentucky Medicaid fee schedule developed from a resource-based relative value scale (RBRVS) on parity with medical doctors as described in subsection (2) of this section. If an RBRVS based fee is not established, the department shall set a reasonable fixed upper limit for the procedure consistent with general Medicaid rate setting methodology. [cabinet at seventy-eight (78) percent of the median billed charge using 1993 calendar year billed charges. If there is no median available for a procedure, or the cabinet determines that available data relating to the median for a procedure is unreliable, the cabinet shall set a reasonable fixed upper limit for the procedure consistent with the general array of upper limits for the type of service.] [Fixed upper limits not determined in accordance with the principle shown in this section of the administrative regulation {(if any)} due to consideration of other factors {(such as recipient access)} shall be specified in the administrative regulation.]

(2) The RBRVS unit [units] shall be multiplied by a dollar conversion factor to arrive at the fixed upper limit [limits]. The department [Medicaid] shall use the Kentucky conversion factor for "all other services" as established [referenced] in 907 KAR 3:010, Section 2(2)(b).

(3) Reimbursement for ~~[materials-](eyeglasses or a part [parts])~~ of eyeglasses~~)]~~ shall be made at the optical laboratory cost of the materials not to exceed the upper limit [limits] for materials as established [set] by the department [cabinet]. An optical laboratory invoice, or proof of actual acquisition cost of materials, shall be maintained in the recipient's medical records for postpayment review.

(4) Reimbursement for a covered clinical laboratory service [services] shall be based on the Medicare allowable payment rates. For a laboratory service [services] with no established allowable payment rate, the payment shall be sixty-five (65) percent of the usual and customary actual billed charges.

Section 3. Maximum Reimbursement for Covered Procedures and Materials for Ophthalmic Dispensers. (1) Reimbursement for a covered service [services] within the ophthalmic dispenser's scope of licensure, including a dispensing service fee or a repair service fee, rendered by a licensed ophthalmic dispenser [dispensers] to an eligible recipient [recipients] shall be the ophthalmic dispenser's usual and customary actual billed charges up to the fixed upper limit per procedure established by the department using the [a] Kentucky Medicaid fee schedule developed from a resource-based relative value scale (RBRVS) on parity with medical doctors as described in subsection (2) of this section. If an RBRVS based fee is not estab-

lished, the department shall set a reasonable fixed upper limit for the procedure consistent with general Medicaid rate setting methodology. ~~[cabinet at seventy-eight (78) percent of the median billed charge using 1993 calendar year billed charges. If there is no median available for a procedure, or the cabinet determines that available data relating to the median for a procedure is unreliable, the cabinet shall set a reasonable fixed upper limit for the procedure consistent with the general array of upper limits for the type of service.] [Fixed upper limits not determined in accordance with the principle shown in this subsection of the administrative regulation ((if any)) due to consideration of other factors ((such as recipient access)) shall be specified in the administrative regulation.]~~

(2) ~~The RBRVS unit [unite]~~ shall be multiplied by a dollar conversion factor to arrive at the fixed upper limit. ~~The department [limits-Medicaid]~~ shall use the Kentucky conversion factor for "all other services" as established [referenced] in 907 KAR 3:010, Section 2(2)(b).

(3) Reimbursement for ~~[materials ((eyeglasses or a part [parte]~~ of eyeglasses)) shall be made at the optical laboratory cost of the materials not to exceed the upper limit [limits] for materials as established [set] by the department [cabinet]. A laboratory invoice, or proof of actual acquisition cost of materials, shall be maintained in the recipient's medical records for postpayment review.

Section 4. Reimbursement for Other Supplies and Materials. A supply or material, including [Other supplies and materials such as] cleaning fluid, cleaning cloth, or a carrying case [cases, etc.], which is [are] not eyeglasses or a replacement or repair part [parte] for eyeglasses, shall [are considered to] be provided in conjunction with and paid for as a part of the vision service [services] rendered, and an additional charge [chargee] shall not be made to the department [cabinet] or the recipient for this item [these items].

Section 5. Limitations. (1) Program reimbursement for eyeglasses shall be inclusive. The cost of both laboratory materials and dispensing fees shall be billed to either the program or the recipient. If a [any] portion of the amount is billed to or paid by the recipient, the department shall not be responsible for payment of the bill. [no responsibility for reimbursement shall attach to the cabinet and no bill for the service shall be paid by the cabinet.] This limitation shall not, however, preclude the provider from billing [issuance of billings for the purpose of establishing the liability of, or collecting from,] a liable third party [parties].

(2) A telephone consultation [consultations] [contacts] shall be excluded from payment.

(3) Contact lenses shall be excluded from payment.

(4) Safety glasses shall be covered if proof of medical necessity is documented. [when medically necessary, subject to prior authorization.]

(5) A prism [Prisme], if medically necessary, shall be added within the cost of the lenses.

(6) A low-vision service [services] shall be excluded from payment.

(7) A press-on prism [prisme] shall be excluded from payment.

Section 6. Third Party Liability. Medicaid shall be the payor of last resort. The policy related to nonduplication of payments and third-party liability is established [shown] in 907 KAR 1:005[Nonduplication of payments].

~~[Section 7. Implementation Date. The provisions of this administrative regulation shall be applicable for services provided on or after June 1, 1994.]~~

JOHN H. MORSE, Commissioner and Secretary  
APPROVED BY AGENCY: April 7, 1997  
FILED WITH LRC: April 10, 1997 at 4 p.m.

ADMINISTRATIVE REGULATIONS RECEIVED AFTER PUBLIC HEARING  
OR RECEIPT OF WRITTEN COMMENTS

PUBLIC PROTECTION AND REGULATION CABINET  
Department of Insurance  
(Amended After Hearing)

806 KAR 3:190. Risk-based capital for insurers.

RELATES TO: KRS 304.3-120, 304.3-140, 304.6, 304.7, 304.24-350, 304.33

STATUTORY AUTHORITY: KRS 304.2-110, 304.3-125

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.3-125 provides that the commissioner is granted the authority to adopt administrative regulations that are promulgated and adopted by the National Association of Insurance Commissioners and a requirement of certification for the department. The NAIC requires that the department have this administrative regulation for accreditation. This administrative regulation established risk-based capital requirements for all insurers authorized to transact insurance business in Kentucky. The risk-based capital requirements will assist the department in determining financial strength.

Section 1. Definitions. (1) "Adjusted RBC report" means an RBC report which has been adjusted by the commissioner in accordance with Section 2(7) of this administrative regulation.

(2) "Corrective order" means an order issued by the commissioner specifying corrective actions which the commissioner has determined are required.

(3) The definition of "domestic insurer" shall be governed by KRS 304.1-070(1).

(4) The definition of "foreign insurer" shall be governed by KRS 304.1-070(2).

(5) "NAIC" means the National Association of Insurance Commissioners.

(6) "Life and health insurer" means any insurance company licensed to write insurance as defined in KRS 304.5-020, 304.5-030, and 304.5-040 or a licensed property and casualty insurer writing only accident and health insurance.

(7) "Property and casualty insurer" means any insurance company licensed to write insurance as defined in KRS 304.5-050, 304.5-060, 304.5-070, 304.5-080, and 304.5-110 but shall not include monoline mortgage guaranty insurers, financial guaranty insurers and title insurers.

(8) "Negative trend" means, with respect to a life or health insurer, negative trend over a period of time, as determined in accordance with the "Trend Test Calculation" included in the RBC instructions.

(9) "RBC" means risk-based capital.

(10) "RBC instructions" means the RBC Report including risk-based capital instructions adopted by the NAIC.

(11) "RBC Level" means an insurer's company action level RBC, regulatory action level RBC, authorized control level RBC, or mandatory control level RBC where:

(a) "Company action level RBC" means, the product of two (2.0) and its authorized control level RBC;

(b) "Regulatory action level RBC" means the product of one and five-tenths (1.5) and its authorized control level RBC;

(c) "Authorized control level RBC" means the number determined under the risk-based capital formula in accordance with the RBC instructions;

(d) "Mandatory control level RBC" means the product of seven-tenths (.70) and the authorized control level RBC.

(12) "RBC plan" means a comprehensive financial plan containing the elements specified in Section 3(2) of this administrative regulation.

(13) "RBC report" means the report required in Section 2 of this administrative regulation.

(14) "Revised RBC plan" means a RBC plan that has been rejected by the commissioner and then revised by the insured.

(15) "Total adjusted capital" means the sum of:

(a) An insurer's statutory capital and surplus as determined in accordance with the statutory accounting applicable to the annual financial statements required to be filed under KRS 304.3-240; and

(b) Any other items as specified in the RBC instructions.

Section 2. RBC Reports. (1) On or prior to March 1, every domestic insurer shall prepare and submit to the commissioner a RBC report for the calendar year just ended.

(2) The RBC report shall be filed in a form and contain information as is required by the RBC instructions.

(3) In addition, every domestic insurer shall file its RBC report with:

(a) The NAIC in accordance with the RBC instructions; and

(b) The insurance commissioner in any state in which the insurer is authorized to do business, if the insurance commissioner has notified the insurer of its request in writing, in which case the insurer shall file its RBC report not later than the later of:

1. Fifteen (15) days from the receipt of notice to file its RBC report with that state; or

2. The filing date.

(4) Requirements for life and health insurers:

(a) A life and health insurer's RBC shall be determined in accordance with the formula set forth in the RBC instructions.

(b) The formula shall take into account and may adjust for the covariance between the following which are determined in each case by applying the factors in the manner set forth in the RBC instructions:

1. The risk with respect to the insurer's assets;

2. The risk of adverse insurance experience with respect to the insurer's liabilities and obligations;

3. The interest rate risk with respect to the insurer's business; and

4. All other business risks and other relevant risks as are set forth in the RBC instructions;

(5) Requirements for property and casualty insurers:

(a) A property and casualty insurer's RBC shall be determined in accordance with the formula set forth in the RBC instructions.

(b) The formula shall take into account and may adjust for the covariance between the following which shall be determined in each case by applying the factors in the manner set forth in the RBC instructions:

1. Asset risk;

2. Credit risk;

3. Underwriting risk; and

4. All other business risk and other relevant risks as are set forth in the RBC instructions;

(6) Insurers shall seek to maintain capital above the RBC levels required by this administrative regulation. An excess of capital over the amount produced by the risk-based capital requirements contained in this administrative regulation and the formulas, schedules and instructions referenced in this administrative regulation is desirable in the business of insurance. Additional capital is used and useful in the insurance business and helps to secure an insurer against various risks inherent in, or affecting, the business of insurance and not accounted for or only partially measured by the risk-based capital requirements

**contained in this administrative regulation.**

(7) If a domestic insurer files an RBC report which in the judgment of the commissioner is inaccurate, then the commissioner shall:

- (a) Adjust the RBC report to correct the inaccuracy;
- (b) Notify the insurer of the adjustment;
- (c) Inform the insurer in writing of the reason for the adjustment; and
- (d) Once the RBC report is adjusted, refer to the report as the adjusted RBC report.

Section 3. Company Action Level Event. (1) A company action level event is any of the following events:

(a) The filing of an RBC report by an insurer which indicates that:

1. The insurer's total adjusted capital is greater than or equal to its regulatory action level RBC but less than its company action level RBC; or

2. If a life or health insurer, the insurer has:

a. Total adjusted capital which is greater than or equal to its company action level RBC but less than the product of its authorized control level RBC and two and five-tenths (2.5); and

b. A negative trend;

(b) The notification by the commissioner to the insurer of an adjusted RBC report that indicates an event in paragraph (a) of this subsection, provided the insurer does not challenge the adjusted RBC report under Section 7 of this administrative regulation; or

(c) If, pursuant to Section 7 of this administrative regulation, an insurer challenges an adjusted RBC report that indicates the event in paragraph (a) of this subsection, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(2) In the event of a company action level event, the insurer shall prepare and submit to the commissioner an RBC plan which shall:

(a) Identify the conditions which contribute to the company action level event;

(b) Propose corrective actions which the insurer intends to take in order to eliminate the company action level event;

(c) Provide projections of the insurer's financial results in the current year and at least the four (4) succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions including:

1. Projections of statutory operating income, net income, capital, or surplus;

2. The projections for both new and renewal business may include separate projections for each major line of business and separately identify each significant income, expense, and benefit component.

(d) Identify the key assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions; and

(e) Identify the quality of the insurer's business and problems associated with the insurer's business, including the following:

1. Assets;

2. Anticipated business growth and associated surplus strain;

3. Extraordinary exposure to risk;

4. Mix of business;

5. Use of reinsurance; and

6. Other important factors.

(3) The RBC plan shall be submitted:

(a) Within forty-five (45) days of the company action level event; or

(b) If the insurer challenges an adjusted RBC report pursuant to Section 7 of this administrative regulation, within forty-five (45) days after notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(4) Within sixty (60) days after the submission by an insurer of an RBC plan to the commissioner, the commissioner shall notify the insurer whether the RBC plan shall be implemented or is, in the

judgment of the commissioner, unsatisfactory.

(5) If the commissioner determines that the RBC plan is unsatisfactory, the notification to the insurer shall set forth the reasons for the determination, and may set forth proposed revisions which will render the RBC plan satisfactory, in the judgment of the commissioner.

(6) Upon notification from the commissioner, the insurer shall prepare a revised RBC plan which may incorporate by reference any revisions proposed by the commissioner, and shall submit the revised RBC plan to the commissioner:

(a) Within forty-five (45) days after the notification from the commissioner; or

(b) If the insurer challenges the notification from the commissioner under Section 7 of this administrative regulation, within forty-five (45) days after a notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(7) In the event of a notification by the commissioner to an insurer that the insurer's RBC plan or revised RBC plan is unsatisfactory, the commissioner may at the commissioner's discretion, subject to the insurer's right to a hearing under Section 7 of this administrative regulation, specify in the notification that the notification constitutes a regulatory action level event.

(8) Every domestic insurer that files a RBC plan or revised RBC plan with the commissioner shall file a copy of the RBC plan or revised RBC plan with the insurance commissioner in any state in which the insurer is authorized to do business if:

(a) The state has an RBC provision substantially similar to Section 8(1) of this administrative regulation; and

(b) The insurance commissioner of that state has notified the insurer of its request for the filing in writing.

(9) If the insurer is required by subsection (8) of this section to file a RBC plan or revised RBC plan with another state, then it shall be filed in that state by the latter of the following time periods:

(a) Fifteen (15) days after the receipt of notice to file a copy of its RBC plan or revised RBC plan with the state; or

(b) The date on which the RBC plan or revised RBC plan is filed under subsections (3) and (4) of this section.

Section 4. Regulatory Action Level Event. (1) A regulatory action level event is any of the following events:

(a) The filing of an RBC report by the insurer which indicates that the insurer's total adjusted capital is greater than or equal to its authorized control level RBC but less than its regulatory action level RBC;

(b) The notification by the commissioner to an insurer of an adjusted RBC report that indicates a regulatory action level event, provided the insurer does not challenge the adjusted RBC report under Section 7 of this administrative regulation;

(c) If, pursuant to Section 7 of this administrative regulation, the insurer challenges an adjusted RBC report that indicates a regulatory action level event, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge;

(d) The failure of the insurer to file an RBC report by the filing date, unless the insurer has provided an explanation for that failure which is satisfactory to the commissioner and has cured the failure within ten (10) days after the filing date; --

(e) The failure of the insurer to submit an RBC plan to the commissioner within the time period set forth in Section 3(3) of this administrative regulation;

(f) Notification by the commissioner to the insurer that:

1. The RBC plan or revised RBC plan submitted by the insurer is, in the judgment of the commissioner, unsatisfactory; and

2. The notification constitutes a regulatory action level event with respect to the insurer, provided that the insurer has not challenged the determination under Section 7 of this administrative regulation;

(g) If, pursuant to Section 7 of this administrative regulation, the

insurer challenges a determination by the commissioner under paragraph (f) of this subsection, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected such challenge;

(h) Provided that the insurer has not challenged the determination under Section 7 of this administrative regulation, notification by the commissioner to the insurer that:

1. The insurer has failed to adhere to its RBC plan or revised RBC plan; and

2. The insurer's failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event in accordance with its RBC plan or revised RBC plan.

(i) If, pursuant to Section 7 of this administrative regulation, the insurer challenges a determination by the commissioner under paragraph (h) of this subsection, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the challenge.

(2) In the event of a regulatory action level event the commissioner shall:

(a) Require the insurer to prepare and submit an RBC plan or, if applicable, a revised RBC plan;

(b) Perform an examination or analysis as the commissioner deems necessary of the assets, liabilities, and operations of the insurer including a review of its RBC plan or revised RBC plan; and

(c) Subsequent to the examination or analysis, issue a corrective order specifying corrective actions as the commissioner shall determine are required.

(3) In determining corrective actions, the commissioner may take into account relevant factors based upon the commissioner's examination or analysis of the assets, liabilities, and operations of the insurer, which shall include but not be limited to, the results of any sensitivity tests undertaken pursuant to the RBC instructions.

(4) The RBC plan or revised RBC plan shall be submitted:

(a) Within forty-five (45) days after the occurrence of the regulatory action level event;

(b) If the insurer challenges the adjusted RBC report pursuant to Section 7 of this administrative regulation and the challenge is not frivolous in the judgment of the commissioner, within forty-five (45) days after the notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge; or

(c) If the insurer challenges a revised RBC plan pursuant to Section 7 of this administrative regulation and the challenge is not frivolous in the judgment of the commissioner, within forty-five (45) days after the notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(5) The commissioner may retain actuaries and investment experts and other consultants as may be necessary in the judgment of the commissioner to:

(a) Review the insurer's RBC plan or revised RBC plan;

(b) Examine or analyze the assets, liabilities, and operations of the insurer; and

(c) Formulate the corrective order with respect to the insurer.

(6) The fees, costs, and expenses relating to consultants shall be borne by the affected insurer or other party as directed by the commissioner.

Section 5. Authorized Control Level Event. (1) An authorized control level event is any of the following events:

(a) The filing of an RBC report by the insurer which indicates that the insurer's total adjusted capital is greater than or equal to its mandatory control level RBC but less than its authorized control level RBC;

(b) The notification by the commissioner to the insurer of an adjusted RBC report that indicates an authorized control level event, provided the insurer does not challenge the adjusted RBC report under Section 7 of this administrative regulation;

(c) If, pursuant to Section 7 of this administrative regulation, the

insurer challenges an adjusted RBC report that indicates an authorized control level event, notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge;

(d) The failure of the insurer to respond, in a manner satisfactory to the commissioner, to a corrective order, provided that the insurer has not challenged the corrective order under Section 7 of this administrative regulation; or

(e) If the insurer has challenged a corrective order under Section 7 of this administrative regulation and the commissioner has, after a hearing, rejected the challenge or modified the corrective order, the failure of the insurer to respond, in a manner satisfactory to the commissioner, to the corrective order subsequent to rejection of modification by the commissioner.

(2) In the event of an authorized control level event with respect to an insurer, the commissioner shall:

(a) Take actions as are required under Section 4 of this administrative regulation regarding an insurer to which an regulatory action level event has occurred; or

(b) Take actions as are necessary to cause the insurer to be placed under regulatory control pursuant to KRS Chapter 304, Subtitle 33 if the commissioner deems it to be in the best interest of the policyholders, creditors of the insurer, and public.

(3) The authorized control level event shall be deemed sufficient grounds for the commissioner to take action under KRS Chapter 304, Subtitle 33. In the event the commissioner takes actions under this section pursuant to an adjusted RBC report, the insurer shall be entitled to such protections as are afforded to insurers under the provisions of the section pertaining to summary proceedings.

Section 6. Mandatory Control Level Event. (1) A mandatory control level event is any of the following events:

(a) The filing of an RBC report which indicates that the insurer's total adjusted capital is less than its mandatory control level RBC;

(b) Notification by the commissioner to the insurer of an adjusted RBC report that indicates a mandatory control level event, provided the insurer does not challenge the adjusted RBC report under Section 7 of this administrative regulation; or

(c) If, pursuant to Section 7 of this administrative regulation, the insurer challenges an adjusted RBC report that indicates a mandatory control level event, notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(2) In the event of a mandatory control level event for a life insurer:

(a) The commissioner shall take actions as are necessary to place the insurer under regulatory control pursuant to KRS Chapter 304, Subtitle 33.

(b) If the commissioner takes actions pursuant to an adjusted RBC report, the insurer shall be entitled to the protections of KRS Chapter 304, Subtitle 33 pertaining to summary proceedings.

(c) The commissioner may forego action for up to ninety (90) days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety (90) day period.

(3) In the event of a mandatory control level event for a property and casualty insurer:

(a) The commissioner shall take actions as are necessary to place the insurer under regulatory control pursuant to KRS Chapter 304, Subtitle 33.

(b) In the case of an insurer which is writing no business and which is running-off its existing business, the commissioner may allow the insurer to continue its run-off under the supervision of the commissioner.

(c) In either event, the mandatory control level event shall be deemed sufficient grounds for the commissioner to take action under KRS Chapter 304, Subtitle 33.

(d) If the commissioner takes actions pursuant to an adjusted RBC report, the insurer shall be entitled to the protections of KRS Chapter 304, Subtitle 33 pertaining to summary proceedings.

(e) The commissioner may forego action for up to ninety (90) days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety (90) day period.

Section 7. Hearings. (1) Upon any of the following notifications, the insurer shall have the right to a confidential departmental hearing at which the insurer may challenge any determination or action by the commissioner:

(a) Notification to an insurer by the commissioner of an adjusted RBC report; or

(b) Notification to an insurer by the commissioner that:

1. The insurer's RBC plan or revised RBC plan is unsatisfactory; and

2. The notification constitutes a regulatory action level event with respect to the insurer; or

(c) Notification to any insurer by the commissioner of the following:

1. The insurer has failed to adhere to its RBC plan or revised RBC plan; and

2. This failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event with respect to the insurer in accordance with its RBC plan or revised RBC plan; or

(d) Notification to an insurer by the commissioner of a corrective order.

(2) The insurer shall notify the commissioner of its request for a hearing within five (5) days after the notification by the commissioner under subsection (1) of this section.

(3) Upon receipt of the insurer's request for a hearing, the commissioner shall set a date for the hearing, which shall be no less than ten (10) nor more than thirty (30) days after the date of the insurer's request.

Section 8. Confidentiality; Prohibition on Announcements, Prohibition on Use in Ratemaking. (1) The following records are confidentially disclosed pursuant to the requirements of this administrative regulation and shall constitute proprietary information that, if disclosed, would create an unfair competitive advantage to competitors and shall be kept confidential by the commissioner:

(a) RBC reports;

(b) RBC plans;

(c) Results or report of an examination or analysis of an insurer performed pursuant to a RBC plan; and

(d) Corrective order.

(2) Comparison of insurer's total adjusted capital to any RBC levels shall be a regulatory tool and shall not be used to rank insurers.

(3) An insurer, agent, broker, or other person engaged in the insurance business shall not disseminate orally or in any manner or cause to be disseminated directly or indirectly **to the public** an assertion, representation, or statement with regard to RBC levels of any insurer or any component of the calculation. **The comparison of an insurer's total adjusted capital to any of its RBC levels is a regulatory tool which may indicate the need for possible corrective action with respect to the insurer, and is not intended as a means to rank insurers generally.**

(4) If a false statement with regard to a comparison of an insurer's total adjusted capital to its RBC levels or an inappropriate comparison is made, and the falsity is substantially proved, an insurer may issue a statement to rebut the false statement.

(5) RBC instructions, RBC reports, adjusted RBC reports, RBC plans, and revised RBC plans:

(a) Shall be used solely by the commissioner in monitoring the solvency of insurers and the need for possible corrective action with

respect to insurers;

(b) Shall not be used in rate making or as evidence in rate proceedings; and

(c) Shall not be used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance which an insurer or any affiliate is authorized to write.

Section 9. Exemption. The commissioner may exempt from the application of this administrative regulation any domestic property and casualty insurer which:

(1) Writes direct business only in this state;

(2) Writes direct annual premiums of \$2,000,000 or less; and

(3) Assumes no reinsurance in excess of five (5) percent of direct premium written.

Section 10. Foreign Insurers. (1) Any foreign insurer shall, upon the written request of the commissioner, submit to the commissioner an RBC report for the calendar year just ended.

(2) The RBC report of a foreign insurer shall be filed as follows:

(a) On the date an RBC report would be required to be filed by a domestic insurer under this administrative regulation; or

(b) Fifteen (15) days after the request is received by the foreign insurer.

(3) Any foreign insurer shall, at the written request of the commissioner, promptly submit to the commissioner a copy of any RBC plan that is filed with the insurance commissioner of any other state.

(4) The commissioner may require a foreign insurer to file a RBC plan if:

(a) A company action level event, regulatory action level event, or authorized control level event exists as determined by:

1. RBC law applicable in the insurer's state of domicile; or

2. This administrative regulation; and

(b) If the insurance commissioner of the insurer's state of domicile fails to require the foreign insurer to file a RBC.

(5) In the event that the commissioner requires the foreign insurer to file a RBC plan pursuant to subsection (4) of this section, the failure of the foreign insurer to file a RBC Plan with the commissioner shall be grounds to order the insurer to cease and desist from writing new insurance business in this state.

(6) In the event of a mandatory control level event with respect to any foreign insurer, if no domiciliary receiver has been appointed with respect to the foreign insurer under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign insurer:

(a) The commissioner may make application to the Franklin Circuit Court permitted under KRS Chapter 304, Subtitle 33 with respect to the liquidation of property of foreign insurers found in this state; and

(b) The occurrence of the mandatory control level event shall be considered adequate grounds for the application.

Section 11. Notices. (1) All notices by the commissioner to an insurer which may result in regulatory action pursuant to this administrative regulation shall be effective upon dispatch if transmitted by registered or certified mail; or

(2) In the case of any other transmission shall be effective upon the insurer's receipt of the notice.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 1996 NAIC Life Risk-Based Capital Report including Overview and Instructions for Companies (December 31, 1996); and

(b) 1996 NAIC Property and Casualty Risk-Based Capital Report including Overview and Instructions for Companies (December 31, 1996).

(2) This material may be inspected, copied, or obtained at

## ADMINISTRATIVE REGISTER - 126

Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GEORGE NICHOLS III, Commissioner

LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: June 3, 1997

FILED WITH LRC: June 3, 1997 at 4 p.m.

CONTACT PERSON: Sharron S. Burton, Counsel, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, Telephone: (502) 564-6032, Ext. 239, Fax: (502) 564-1456.

### REGULATORY IMPACT ANALYSIS

Contact Person: Sharron S. Burton

(1) Type and number of entities affected: There are 616 life and health insurers and 802 property and casualty insurers.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received regarding this issue.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received regarding this issue.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: All life and health insurers and property and casualty insurers must file a risk based capital report with annual statements. Other reporting requirements may be necessary if certain risk based capital levels are reported.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No costs or savings.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The department will have additional responsibility to review risk based capital reports.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The normal budget used for the Department of Insurance.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No public comments were received regarding this issue.

(b) Kentucky: No public comments were received regarding this issue.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This regulation is required for accreditation by the NAIC. Most companies are already complying with the requirements in other states. Therefore, the department does not want to propose alternatives but rather be consistent with NAIC guidelines and other state's laws.

(8) Assessment of expected benefits: The department will have an additional tool in determining the financial strength of an insured. Policyholders will have more protection.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) TIERING: Is tiering applied? Tiering is not applied because this regulation will be applied equally to all life and health insurers and property and casualty insurers.

### CABINET FOR HEALTH SERVICES

#### Department for Public Health

#### Division of Environmental Health and Community Safety (Amended After Hearing)

#### 902 KAR 55:040. Excluded over-the-counter products.

RELATES TO: KRS 218A.020 to 218A.130

STATUTORY AUTHORITY: KRS 194.050, 211.090, 218A.020, 218A.250, EO-96-862

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources, establishes and creates the Cabinet for Health Services, changes the name of the Department for Health Services to Department for Public Health, and places the Department for Public Health and its programs under the Cabinet for Health Services. KRS 218A.020(4) requires [and 218A.090(4)(i) authorize] [authorizes] the Cabinet for Health Services [Human Resources] to exclude products that may be lawfully sold over the counter (without prescription) from the provisions of KRS Chapter 218A [relating to controlled substances] [of KRS Chapter 218A]. The purpose of this administrative regulation is to exclude certain over-the-counter products from the provisions of KRS Chapter 218A.

Section 1. Excluded Over-the-counter Products. The Cabinet for Health Services excludes the following products from the provisions of KRS Chapter 218A:

(1) Asthma-Ese®, tablet, NDC code 00349-2018: phenobarbital 8.10 mg.;

(2) Azma-Aids®, tablet, NDC code 00367-3153: phenobarbital 8 mg.;

(3) ~~Benzedrex®, inhaler, NDC code 49692-0020: propylhexedrine 250 mg.;~~

(4) Bronkoxir®, elixir, NDC code 00057-1004: phenobarbital 0.8 mg/ml.;

(4) ~~(5)~~ Bronkotabs®, tablet, NDC code 00057-1005: phenobarbital 8 mg.;

(5) ~~(6)~~ Choate's Leg Freeze®, liquid: chloral hydrate 246.67 mg/ml.;

(6) ~~(7)~~ Guiaphed® Elixir, elixir, NDC code 00182-1377: phenobarbital 4 mg/ml.;

(7) ~~(8)~~ Primatene (P-tablets)®, tablet, NDC code 0573-2940: phenobarbital 8 mg.;

(8) Tedral®, tablet, NDC code 00071-1230: phenobarbital 8 mg.;

(9) ~~(9)~~ Tedral S.A.®, tablet, NDC code 00071-0231: phenobarbital 8 mg.;

(10) ~~(10)~~ Tedral Elixir®, elixir, NDC code 00071-0242: phenobarbital 40 mg/ml.;

(10) Tedral S.A.®, tablet, NDC code 00071-1231: phenobarbital 8 mg.;

(11) Tedral Suspension®, suspension, NDC code 00071-0237: phenobarbital 80 mg/ml.;

(12) ~~(12)~~ Tedral®, tablet, NDC code 00071-0230: phenobarbital 8 mg.;

(13) Tedrigen®, tablet, NDC code 00182-0134: phenobarbital 8

mg.;

(13) [(44)] Theophed®, tablet, NDC code 00719-1945: phenobarbital 8 mg; and

(14) [(45)] Vicks Inhaler®, inhaler, NDC code 23900-0010: 1-Desoxyephedrine 113 mg. [Any compound, mixture, or preparation containing any nonnarcotic substance which shall be excluded from the provisions of the federal controlled substance law as set forth in the April 1, 1994 edition of the Code of Federal Regulations (CFR), Title 21, Food and Drugs, Chapter II—Drug Enforcement Administration, Department of Justice, Section 1308.22, Excluded Substances, incorporated by reference, shall be excluded from the provisions of KRS Chapter 218A. The Code of Federal Regulations is published by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408. A copy of 21 CFR 1308.22 shall be on file in the Office of Drug Control, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky, 40621, and shall be available for public inspection and copying Monday through Friday 8 a.m.—4:30 p.m. A copy of the CFR is also available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.]

RICE C. LEACH, MD, Commissioner

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: June 6, 1997

FILED WITH LRC: June 6, 1997 at noon

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Edward Crews

(1) Type and number of entities affected: Approximately 30,000 health care professionals including pharmacists, physicians, dentists, veterinarians and nurses in the Commonwealth are affected by this administrative regulation.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received on this issue.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received on this issue.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There is no compliance, reporting or paperwork required by this regulation.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no anticipated costs or savings to the administrative agency because the only changes are technical or format.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There is no reporting or paperwork required by this administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues is anticipated.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The administration of drug regulations is financed by the general fund.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No comments were received related to this issue.

(b) Kentucky: No comments were received related to this issue.

(7) Assessment of alternative methods: reasons why alternatives were rejected: Alternatives were rejected because nonconformity with federal regulation would result.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The benefit is conformity with federal regulations and the elimination of recordkeeping requirements for the products listed in this regulation.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: If the administrative regulation is not implemented, controls on these products will be more stringent than federal requirements, which could inhibit their availability to citizens of the Commonwealth.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy conflicts, overlaps or duplicates this administrative regulation.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied because the exclusion applies to all pharmacists or practitioners regardless of specialty, location or type of practice.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The comparable federal laws and regulations are 84 Stat. 1242; 21 USC 811(g)(1) and 21 CFR 1308.22.

2. State compliance standards. The criteria for exclusion are set forth in KRS 218A.020(4) and 218A.090(4)(i).

3. Minimum or uniform standards contained in the federal mandate. The criteria for substances to be excluded are set forth in 84 Stat. 1241; and 21 USC 811(g)(1).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The state regulation imposes no requirements or responsibilities different than federal law.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards are not imposed.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, JUNE 15, 1997

GENERAL GOVERNMENT CABINET  
State Board of Elections  
(Amendment)

31 KAR 4:020. Election costs, county clerk reimbursement and form.

RELATES TO: KRS 117.343

STATUTORY AUTHORITY: KRS 117.015, 117.343

NECESSITY, FUNCTION, AND CONFORMITY: To provide a method and form for the reimbursement to the county clerks for the cost of employing office personnel necessary for the conduct of elections including the registration and purgation of voters.

Section 1. Reimbursement shall be based on the number of registered voters for the general election held in November.

Section 2. The form for reimbursement [~~Finance and Administration Cabinet~~], DOA-48[A], (April 1997 edition) [~~revised 1/91~~] is incorporated by reference [~~herein~~]. Copies of the DOA-48A [~~reimbursement form~~] may be inspected or obtained at the office of the State Board of Elections, 140 Walnut Street [~~Room 71, Capitol Building~~], Frankfort, Kentucky 40601, between the hours of 8 a.m. through 4:30 p.m., EST, Monday through Friday.

JOHN Y. BROWN III, Chairman

APPROVED BY AGENCY: April 18, 1997

FILED WITH LRC: June 10, 1997 at 3 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment shall be held on July 23, 1997 at 9 a.m. in the conference room of the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this meeting shall notify this agency in writing by July 16, 1997, five (5) workdays days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed amendment. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed amendment. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment to the contact person.

Contact Person: George Russell, Executive Director, State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-7100, Fax (502) 573-4369.

REGULATORY IMPACT ANALYSIS

Contact Person: George Russell

(1) Type and number of entities affected: 120 county boards of election.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There are no direct or indirect costs or savings on the cost of living or employment in Kentucky as a result of this administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There are no direct or indirect costs or savings on the cost of doing business in Kentucky as a result of this administrative regulation.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition): There are no direct or indirect costs or savings on compliance, reporting, and paperwork requirements as a result of this administrative regulation.

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings to the State Board of Elections as a result of this administrative regulation.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements for the State Board of Elections as a result of this administrative regulation.

(4) Assessment of anticipated effect on state and local revenues. There is no anticipated effect on state and local revenues as a result of this administrative regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented. This administrative regulation will have no economic effect on the Commonwealth of Kentucky.

(b) Kentucky.

(7) Assessment of alternative methods; reasons why alternative methods were rejected. Alternative methods were not considered because it was unnecessary.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There are no effects on public health or environmental welfare in Kentucky as a result of this administrative regulation.

(b) State whether a detrimental effect on environmental and public health would result if not implemented. There would not be a detrimental effect on the environment or public health if this administrative regulation is not implemented.

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no known statutes, administrative regulations or government policies which overlap or conflict with this administrative regulation.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering is unnecessary.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will affect 120 county clerks who conduct the elections and are charged with the registration and purgation of voters within their counties.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates

to the county clerks administering the elections within their counties.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. This amendment to an administrative regulation will have no effect on the expenditures and revenues of a local government.

Revenues (+/-):

Expenditures (+/-):

Other explanation:

# KENTUCKY TEACHERS' RETIREMENT SYSTEM (Amendment)

## 102 KAR 1:175. Investment policies.

RELATES TO: KRS 161.430

STATUTORY AUTHORITY: KRS 161.310, 161.430

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.430 provides that the board of trustees shall have full power and responsibility for the purchase, sale, exchange, transfer, or other disposition of the investments and money of the Teachers' Retirement System. This administrative regulation establishes investment policies and procedures to carry out these responsibilities.

Section 1. (1) The board of trustees hereby appoints an investment committee consisting of the executive secretary and two (2) trustees. The trustees shall be named at the beginning of each fiscal year. The executive secretary shall act on behalf of the investment committee in administering these investment policies and procedures. To ensure timely market transactions, the executive secretary and the deputy executive secretary for investments are authorized to make purchases and sales of investment instruments without prior board approval.

(2) The board shall be provided quarterly reports reflecting a complete record of all investment transactions.

(3) The board places the following limits on staff employees who are delegated transaction responsibilities:

(a) The investment committee shall be provided a complete record of investment transactions and holdings on a regular basis.

(b) The staff shall maintain a file of investment directives that indicates the committee's separate review of each specific long-term investment.

(c) All "authorizations for investment" shall be approved by the executive secretary or the deputy executive secretary for investments.

Section 2. The board of trustees hereby establishes classes or categories of investment instruments that may be used in investing funds of the Teachers' Retirement System and the board specifies certain limits on the asset classes. The asset allocation parameters are structured in order to maximize return while at the same time provide a prudent diversification of assets and preserve the capital of the Teachers' Retirement System. The board is interested in assuming secure investments that will provide long-term growth to the fund. The board shall not arbitrarily compromise security in order to enhance the prospects of return. The investment committee and the board shall be mindful of the fund's liquidity and its capability at meeting both short- and long-term obligations. In this regard:

(1) There shall be no limit on the amount of investments owned by the system that are guaranteed by the United States government.

(2) Not more than thirty-five (35) percent of the assets of the system at book value shall be invested in corporate debt obligations.

(3) Not more than sixty (60) ~~forty-five (45)~~ percent of the assets of the system at book value shall be invested in common stocks or preferred stocks. Not more than twenty-five (25) percent of the assets

of the system at book value shall be invested in a stock portfolio designed to replicate a general, United States stock index.

(4) Not more than ten (10) percent of the assets of the system at book value shall be invested in real estate. This would include real estate equity, real estate lease agreements, mortgages on real estate that are not guaranteed by the United States government, and shares in real estate investment trusts.

(5) Not more than one (1) percent of the assets of the system at book value shall be invested in venture capital investments providing at least seventy-five (75) percent of these ~~such~~ investments must be in state.

(6) Not more than ten (10) percent of the assets of the system at book value shall be invested in any additional category or categories of investments. The board shall approve by resolution any ~~such~~ additional category or categories of investments.

Section 3. The parameters that govern asset allocation reflect the overriding concern by the board of trustees of preserving the capital assets of the fund, while at the same time, providing opportunities for the fund to realize a rate of growth that will surpass the rate of inflation and meet the long-term financial obligations of the Teachers' Retirement System. Investments of the system can be identified as fixed income or equity holdings. The board has established criteria for each of these broad groups.

(1) Specific guidelines associated with fixed income investments are as follows:

(a) Fixed income investments shall be direct obligations of the United States government, United States government agencies, state governments, or entities that are organized under the laws of the United States. Fixed income investments may be direct obligations of the Dominion of Canada. However, Canadian obligations shall not exceed five (5) percent of the book value of the entire portfolio. The system is prohibited from owning other foreign debt unless it is approved by the board of trustees as an additional category of investments. The system may acquire the obligations of United States corporations that are established in the United States even when substantial portions of the companies are owned by foreign interests.

(b) Fixed income investments should be rated at the time of purchase within the three (3) highest credit classifications identified by one (1) of the major rating services. Private placement debt investments are subject to the same credit qualifications as other fixed income investments.

(c) Not more than twenty-five (25) percent of any single publicly traded debt issue may be purchased as an investment unless the investment has a book value of less than \$25,000,000. Private placement debt investments shall not exceed \$20,000,000 in book value for each investment.

(d) Not more than five (5) percent of the assets of the system at book value shall be invested in the securities of a single issuer, except when the issuer is the United States government or its agencies.

(e) Investments in mortgages shall be first mortgages and on property within the United States unless the mortgages are guaranteed by the United States government. Returns on mortgage investments should reflect their marketability and reliability of cash flow.

(f) The management of fixed income investments will be regarded as active. When a security can be sold to the long-term benefit of the system, it will be sold. Bonds may be swapped in order to take advantage of yield spreads between various qualities of bonds or the yield curve that differentiates bond returns by maturity. On occasion securities will be sold at a loss if alternative investments would add to the value of the fund and would recoup the loss in a reasonable period of time. The board of trustees and the investment committee shall make all investments for the general enrichment and security of the fund.

(2) Specific guidelines associated with equity investments are as

follows:

(a) The system shall not buy bullion, stamps, rare coins, and other collectibles. The system shall not invest in foreign currencies. If the board of trustees were to approve the purchase of foreign equity, the system would be permitted to settle security transactions in foreign cities. However, in any event, the system shall not domicile securities in foreign countries or maintain cash accounts in foreign countries.

(b) All stock investments shall be with corporations that are created under the laws of the United States or are a component of a major United States stock exchange index unless approved by the board as an additional category of investments. The system may acquire equity in United States corporations that operate in foreign countries.

(c) Due to the greater risk associated with stock ownership, stock investments should be expected to yield a higher return on investment than the highest quality bonds.

(d) The system's position in a single stock shall not exceed two (2) percent of the system's assets at book value. The system's position in a single stock shall not exceed five (5) percent of the outstanding stock for that company unless the investment is part of a venture capital program approved by the board of trustees or the investment committee.

(e) Real estate investments are judged on their total return potential. The system shall not acquire undeveloped land unless development plans are imminent.

(f) All real estate purchases that are conducted on a triple net lease basis must involve companies that at the time of the initial agreement can generate one (1) of the three (3) highest crediting ratings with a national credit rating service.

(g) On occasion, the system may sell equity at a price below its cost to the system. Although the board of trustees and the investment committee shall avoid the incurrence of losses, losses will be tolerated when alternative investments would provide a higher return and permit losses to be recouped within a reasonable period.

Section 4. The investment committee evaluates the performance and services of the investment counselors. The committee through the board of trustees, employs investment counselors annually. The committee reviews the performance of counselor recommendations and compares them to anticipated performance, efforts of other counselors, and appropriate market indices. The system may utilize the services of consultants in evaluating counselors. Consultants also may be utilized in ascertaining the combined effect of several investment counselors and the overall risk levels associated with the investment portfolio. The consultants evaluate the effectiveness of investment managers in maintaining prescribed styles of investment. Periodic reports are prepared to identify and document the efforts of investment counselors. Annual reports shall be provided to the board with recommendations from the investment committee.

PAT N. MILLER, Executive Secretary

APPROVED BY AGENCY: March 17, 1997

FILED WITH LRC: June 12, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 25, 1997, at 9 a.m., local time, in the Board Room, Kentucky Teachers' Retirement System Office Building, 479 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 18, 1997, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made, in which case the person requesting the transcript shall be responsible for payment. If you do not wish to attend the public hearing, you may submit written comments on the

proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed amendment to this administrative regulation to: Billy F. Hunt, Deputy Executive Secretary, 479 Versailles Road, Frankfort, Kentucky 40601, telephone (502) 573-3266 and Fax (502) 573-6695.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Billy F. Hunt

(1) Type and number of entities affected: It is anticipated that all active and retired members of the retirement system will indirectly benefit if stocks continue to outperform fixed income investments and the assets of the retirement system increase.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographic area in which the administrative regulations will be implemented: None

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: None

(c) Compliance, reporting, and paperwork requirements of the administrative regulation on those affected for the:

1. First year following implementation: Investment activities are reported to the board of trustees at all quarterly meetings and included in the retirement system's annual report and annual investment report.

2. Second and subsequent years: Same as first year.

(3) Effects of the promulgating administrative body:

(a) Direct and indirect costs of savings:

1. First year: There may be additional brokerage commissions for purchasing and selling stock depending upon the number of trades executed and the amount of shares involved.

2. Second and subsequent years: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Same as (2)(c)1.

(4) Assessment of anticipated effect on state and local revenues:

It is anticipated that the assets at book value of the retirement system will increase. However, these assets are being managed by the retirement system for the benefit of its members and do not effect state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of the administrative regulation: The expenses relating to purchasing and selling stock are paid from investment earnings of the retirement system pursuant to KRS 161.420(1).

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation on:

(a) Geographic area in which the administrative regulation will be implemented: No comments received.

(b) Kentucky: No comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The retirement system prudently manages a diversified investment portfolio. Increasing the percentage of assets at book value that the retirement system may invest in stocks as opposed to other fixed income investments is based upon the fact that stocks have outperformed fixed income investments over the past ten (10) years. The increase in common and preferred stock investments from 45% to 60% allows the retirement system to take advantage of investment opportunities in the stock market instead of investing assets in other fixed income investments.

(8) Assessments of expected benefits: The retirement system anticipates that the increased investment of assets in common and preferred stocks will increase the book value of investments managed by the retirement system.

(a) Identify effects on public health and environment welfare of the geographic area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environmental and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect:

Not applicable.

(9) Identify any statute, rule, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied because the administrative regulation does not impact any classes or regulated entities and does not regulate entities that contribute to the problem addressed by the administrative regulation.

**GENERAL GOVERNMENT CABINET  
Kentucky State Board of Examiners  
and Registration of Landscape Architects  
(Amendment)**

**201 KAR 10:010. ~~Duties of~~ Board personnel.**

RELATES TO: KRS 323A.210

STATUTORY AUTHORITY: KRS 323A.210(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323A.210 requires the board to keep complete and accurate records, ~~and~~ This administrative regulation requires ~~is fashioned to require~~ the board secretary to be responsible for accurate and complete records of all board transactions, and the ~~with a board appointed~~ executive director to be responsible for administrative functioning of the board.

Section 1. Duties of ~~the~~ Board Personnel. (1) The board secretary shall be responsible for accurate and complete records of all transactions of the board.

(2) The board shall appoint an executive director who shall ~~will~~ be responsible for the administrative functioning of the board.

(3) The executive director shall forward to each applicant:

(a) Application forms;

(b) Board ~~a copy of the~~ administrative regulations; and

(c) A copy of applicable statutes. ~~the Act along with all applications to the applicants.~~

JOSEPH H. CLARK, President

APPROVED BY AGENCY: April 14, 1997

FILED WITH LRC: June 9, 1997 at noon

PUBLIC HEARING: A public hearing on these proposed administrative regulations shall be held on July 21, 1997 at 10 a.m., at the Kentucky State Board of Examiners and Registration of Landscape Architects, 160 Democrat Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 14, 1997, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on these proposed administrative regulations. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulations. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulations to: Jane Alexander Gardner, Kentucky State Board of Examiners and Registration of Landscape Architects, 160 Democrat Drive, Frankfort, Kentucky 40601, (502) 573-3263.

**REGULATORY IMPACT ANALYSIS**

Contact person: Jane Alexander Gardner

(1) Type and number of entities affected: This administrative regulation will affect approximately 200 individuals per year. The individuals affected are those individuals who maintain a license to practice landscape architecture in the Commonwealth of Kentucky.

(2) Direct and indirect costs or savings on the: This administrative regulation should pose no change in costs or savings on the licensed professionals.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received:

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received:

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body: This administrative regulation amendment should pose no change in costs or savings on the board.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: This administrative regulation amendment will require no revenue to implement or enforce.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

There will be no economic impact in any specific geographical areas as this regulation applies to all licensees.

(a) Geographical area in which administrative regulation will be implemented:

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were needed as this administrative regulation merely simplifies the language of board duties.

(8) Assessment of expected benefits: This regulation will have no effect on public health or environmental welfare.

(a) Identify the effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky.

(b) State whether a detrimental effect on environment and public health would result if not implemented:

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This regulation will not conflict, overlap or duplicate any statute, administrative regulation or government policy.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? Tiering is not applicable to this administrative regulation as uniformity has been set for all licensees.

GENERAL GOVERNMENT CABINET  
Kentucky State Board of Examiners  
and Registration of Landscape Architects  
(Amendment)

201 KAR 10:040. Applications.

RELATES TO: KRS 323A.040, 323A.050, 323A.060, 323A.070  
STATUTORY AUTHORITY: KRS 323A.210(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323A.210 authorizes the board to adopt all reasonable administrative regulations, ~~and~~ This administrative regulation establishes the ~~is intended to establish~~ procedures for the filing and processing of applications for registration as landscape architects ~~in this state~~.

Section 1. Filing of Applications. (1) An application ~~[Applications]~~ for registration as a landscape architect may be filed ~~[received at any time]~~ during regular business hours at the office of the board.

(2) An application ~~[But applications]~~ for a written examination ~~[examinations]~~ shall be filed with the processing fee ~~[prescribed fee in such]~~ prescribed in 201 KAR 10:050, Section 1(6), at the office of the board ~~[at the office of the board]~~ at least four (4) months ~~[six (6) weeks]~~ prior to the beginning ~~[opening]~~ date of an examination ~~[the examinations]~~.

(3) Except as provided in subsection (2) of this section, fees prescribed in 201 KAR 10:050, Section 1(6), ~~[(2) All fees payable by applicants]~~ shall accompany ~~[the]~~ applications.

Section 2. Additional Information. (1)(a) ~~[(3)]~~ The board may require ~~[reserves the right to request]~~ additional information ~~[including a personal appearance,]~~ from an ~~[each]~~ applicant, including ~~[together with any necessary]~~ documentary evidence, to establish the applicant's age, education, or experience if it determines that documentation submitted by the applicant to the board is insufficient ~~[in cases where questions concerning qualifications may arise].~~

(b) The board may require an applicant to appear before it to establish the applicant's age, education, or experience if it determines that documentation submitted by the applicant to the board is insufficient. ~~[Personal appearances before the board shall be at a time and place designated by the board.]~~

(2) An application may be disapproved for failure, without just cause, to comply with a written request from the board made pursuant to subsection (1) of this section:

(a) For additional information within sixty (60) days of the request;  
or

(b) To appear before the board.

(3)(a) ~~[(4)]~~ The board may retain ~~[reserves the right to]~~ any and all ~~[all]~~ documents submitted as evidence of qualification pursuant to the provisions of this section. ~~[qualifications for registration.]~~

(b) Photostatic copies of original documents may be submitted if they are notarized as true copies.

~~[(5) Failure to comply with a written request from the board for additional evidence or information or to appear before the board when deemed necessary within sixty (60) days of such notice may be sufficient and just cause for the disapproval of the application.]~~

Section 3. Personal References. (1) A member ~~[(6) Members]~~ of the board shall ~~[may]~~ not serve as a personal reference for an applicant.

(2) A member of the board ~~[references; however, they]~~ may be listed as a person ~~[persons]~~ who has ~~[have]~~ supervised the work of an ~~[the]~~ applicant.

~~[(7) The board reserves the right to exercise the discretion provided in the act by requiring the applicants to qualify by either:~~

(a) Passing the regular written or written and oral examinations;  
or

(b) Having a satisfactory examination record from another state, providing it is deemed equal in all respects to that given in Kentucky.]

Section 4. Reciprocity. An applicant ~~[(9) All applicants]~~ who seeks ~~[seek]~~ registration under KRS 323A.050(1) shall submit:

(a) Satisfactory proof of registration in good standing in states in which the applicant is licensed; and

(b) A statement that licensure in these states ~~[any state or states of present registration and shall indicate whether registration]~~ was obtained:

1. Under a grandfather clause; or

2. By examination; or

3. Other means, including an explanation of the other means, ~~[in the particular state in which registration was granted.]~~

Section 5. Board Consideration of Applications. (1) Each applicant ~~[(9) All applicants]~~ shall be considered individually by the board and passed or rejected by a roll call vote.

(2) Approval of an applicant shall ~~[will]~~ require a majority vote of the board.

(3) The action taken by the board shall be recorded in the board minutes.

(4) A copy of the letter from the board notifying an applicant of the board's decision regarding application.

~~[(10) An outline of the action taken by the board shall be placed with each application.]~~

~~[(11) The board reserves the right to establish or change the classification under which the applicant is claiming eligibility.]~~

Section 6. Professional Landscape Architectural Experience. (1) ~~[(12)]~~ Military experience shall be acceptable if ~~[to the board provided]~~ it has been gained ~~[spent]~~ in landscape architecture as defined by the provisions of KRS 323A.010(3) ~~[in the Act].~~

(2) ~~[(13)]~~ The sales and installation of products such as landscape materials (plants and construction) shall not be considered professional services.

(3) ~~[Any]~~ Plans or sketches drawn by a ~~[the same]~~ person solely for the promotion and sale of that person's ~~[his own]~~ products shall not be considered professional services.

JOSEPH H. CLARK, President

APPROVED BY AGENCY: April 14, 1997

FILED WITH LRC: June 9, 1997 at noon

PUBLIC HEARING: A public hearing on these proposed administrative regulations shall be held on July 21, 1997 at 10 a.m., at the Kentucky State Board of Examiners and Registration of Landscape Architects, 160 Democrat Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 14, 1997, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on these proposed administrative regulations. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulations. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulations to: Jane Alexander Gardner, Kentucky State Board of Examiners and Registration of Landscape Architects, 160 Democrat Drive, Frankfort, Kentucky 40601, (502) 573-3263.

REGULATORY IMPACT ANALYSIS

Contact person: Jane Alexander Gardner

(1) Type and number of entities affected: This administrative regulation will affect approximately 50 individuals per year. The individuals affected are those individuals who apply for a license to practice landscape architecture in the Commonwealth of Kentucky.

(2) Direct and indirect costs or savings on the: This administrative regulation should pose no change in costs or savings on the applicants.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received:

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received:

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body: This administrative regulation amendment should pose no change in costs or savings on the board.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues:

This administrative regulation will have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: This administrative regulation amendment will require no revenue to implement or enforce.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: There will be no economic impact in any specific geographical areas as this regulation applies to all applicants.

(a) Geographical area in which administrative regulation will be implemented:

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were needed as this administrative regulation makes more clear the requirements regarding applications.

(8) Assessment of expected benefits: This regulation will have no effect on public health or environmental welfare.

(a) Identify the effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky.

(b) State whether a detrimental effect on environment and public health would result if not implemented:

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This regulation will not conflict, overlap or duplicate any statute, administrative regulation or government policy.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? Tiering is not applicable to this administrative regulation as uniformity has been set for all licensees.

GENERAL GOVERNMENT CABINET  
Kentucky State Board of Examiners  
and Registration of Landscape Architects  
(Amendment)

201 KAR 10:070. Seals.

RELATES TO: KRS 323A.080, 323A.110

STATUTORY AUTHORITY: KRS 323A.080, 323A.210

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation sets forth the requirement [(KRS 323A.080)] for obtaining and the use of a standard landscape architect seal for use in the practice of landscape architecture in the state.

Section 1. Licensees' Seal. (1) The seal required by KRS 323A.080 shall be in the following format:

(2) The seal shall be two (2) inches in diameter with the information contained therein arranged as hereinafter described. The impression of the seal shall contain the following information:

(a) The words "State of Kentucky" at the top between the two (2) knurled circles; and

(b) The words "Registered Landscape Architect" in a like position at the bottom;

(c) The individual's name shall be placed horizontally in the circular field; and

(d) The individual's certificate number shall be placed horizontally beneath the name. [Each licensee shall obtain a rubber stamp or embossed seal following the wording and format adopted by the board provided minor modifications as to size and marginal lines may be approved by the board as long as the seal is easily legible.]

(2) An impression of the seal shall be affixed over the licensee's signature on all documents prepared by him or under his immediate and responsible supervision for use in the Commonwealth of Kentucky.

(3) The use of one's seal on any plans, drawing, specifications, reports or other instruments of service which were not prepared by him or under his immediate and responsible supervision, or permitting one's name to be used for the purpose of assisting any person to evade the provisions of KRS Chapter 323A shall subject such person to suspension or revocation of license.]

JOSEPH H. CLARK, President

APPROVED BY AGENCY: April 14, 1997

FILED WITH LRC: June 9, 1997 at noon

PUBLIC HEARING: A public hearing on these proposed administrative regulations shall be held on July 21, 1997 at 10 a.m., at the Kentucky State Board of Examiners and Registration of Landscape Architects, 160 Democrat Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 14, 1997, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on these proposed administrative regulations. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulations. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulations to: Jane Alexander Gardner, Kentucky State Board of Examiners and Registration of Landscape Architects, 160 Democrat Drive, Frankfort, Kentucky 40601, (502) 573-3263.

REGULATORY IMPACT ANALYSIS

Contact person: Jane Alexander Gardner

(1) Type and number of entities affected: This administrative regulation will affect approximately 200 individuals per year. The individuals affected are those individuals who maintain a license to practice landscape architecture in the Commonwealth of Kentucky.

(2) Direct and indirect costs or savings on the: This administrative regulation should pose no change in costs or savings on the applicants.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received:

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received:

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body: This administrative regulation amendment should pose no change in costs or savings on the board.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues:

This administrative regulation will have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: This administrative regulation amendment will require no revenue to implement or enforce.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: There will be no economic impact in any specific geographical areas as this regulation applies to all licensees.

(a) Geographical area in which administrative regulation will be implemented:

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were needed as this administrative regulation clarifies the use of seals.

(8) Assessment of expected benefits: This regulation will have no effect on public health or environmental welfare.

(a) Identify the effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky.

(b) State whether a detrimental effect on environment and public health would result if not implemented:

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This regulation will not conflict, overlap or duplicate any statute, administrative regulation or government policy.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? Tiering is not applicable to this administrative regulation as uniformity has been set for all licensees.

GENERAL GOVERNMENT CABINET  
Kentucky State Board of Examiners  
and Registration of Landscape Architects  
(Amendment)

201 KAR 10:080. Continuing education.

RELATES TO: KRS 323A.210

STATUTORY AUTHORITY: KRS 323A.210(2)(a), (b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323A.210(2)(a) authorizes [empowers] the board to promulgate [adopt] administrative regulations [as are necessary] to establish a program of continuing education for registrants [under this chapter]. This [proposed] administrative regulation establishes the continuing education requirements for landscape architects [is intended to establish these administrative regulations].

~~Section 1. [General Statement. Each in-state and out-of-state registrant shall be required to meet the continuing education requirements of these administrative regulations for professional development as a condition for registration renewal. Continuing education obtained by a registrant shall maintain, improve or expand skills and knowledge obtained prior to initial licensure or to develop new and relevant skills and knowledge.~~

~~Section 2.] Definitions. (1) "Annually" and "continuing education year" means a twelve (12) month period from July 1 of a calendar year through June 30 of the following calendar year.~~

~~(2) "Board" means the State Board of Examiners and Registration of Landscape Architects of Kentucky.~~

~~(3) "Clock hour" means fifty (50) minutes of actual instruction.~~

~~(4) "Continuing education unit" and "CEU" mean ten (10) clock hours of continuing education experience approved by the board.~~

~~(5) "LARE" means the landscape architectural registration exam.~~

~~(6) "Self-directed study" means a course of study in which a registrant takes and passes an examination offered by the sponsor after the registrant reviews material, views videos, or listens to audio tapes.~~

~~(7) "Sponsor" means an individual, organization, association, institution, or other entity that provides educational activity for the purpose of fulfilling the continuing education requirements of this administrative regulation.~~

~~(8) "Tour" means a review or inspection of landscape architectural elements specified in the definition of "practice of landscape architecture" established by KRS 323A.010(3). [Contact (clock) hour—not less than fifty (50) minutes of instructions.~~

~~(2) Sponsor—an individual, organization, association, institution, or other entity which provides an educational activity for the purpose of fulfilling the continuing education requirements of these guidelines.~~

~~(3) Annual—a twelve (12) month period beginning July 1 of a given year and extending to June 30 of the following year.~~

~~(4) Board—the legal state entity having jurisdiction to register, licensee or institute legal proceedings against a licensee for the practice of landscape architecture and as defined in KRS Chapter 323A.~~

~~(5) UNE—Uniform National Exam.~~

~~(6) Committee—the Professional Development Review Committee.~~

~~(7) Continuing education unit (CEU)—ten (10) contact hours of participation in an organized continuing education experience under responsible sponsorship, capable direction and qualified instruction as approved by the "Council on the Continuing Education Unit".]~~

Section 2. General Statement. (1) A registration shall not be renewed if a registrant has not met the continuing education requirements established by the provisions of this administrative regulation.

(2) Continuing education obtained by a registrant shall maintain,

improve or expand skills and knowledge obtained prior to initial license or develop new and relevant skills and knowledge.

Section 3. Continuing [Professional Development] Education Requirements. ~~[To demonstrate that a licensed landscape architect maintains an acceptable level of competency,] A registrant [licensee] shall acquire the following clock hours:~~

~~(1) [meet the continuing education requirements as prescribed by the board for each year of registration. The requirements shall be obtained and documented to the board prior to the time of licensure renewal. The following are the continuing education requirements as prescribed by the board:~~

~~(1) Eight (8) contact hours of continuing education shall be obtained between November 1990 and June 30, 1992.~~

~~(2) Ten (10) contact hours of continuing education shall be obtained between July 1, 1992 and June 30, 1993.~~

~~(3) Twelve (12) contact hours of continuing education shall be obtained between July 1, 1993 and June 30, 1994.~~

~~(4) Fifteen (15) contact hours of continuing education shall be obtained between July 1, 1994 and June 30, 1995.~~

~~(5) A total of Fifteen (15) clock hours of continuing education [hours] shall be obtained by a registrant annually. [each licensed landscape architect each year after 1995.]~~

~~(2) A registrant may be credited for a maximum of seven and one-half (7 1/2) clock hours of continuing education for tours annually.~~

~~(3) A registrant may carry forward a maximum of fifteen (15) clock hours of continuing education [hours may be carried over for a maximum of one (1) year to apply] to meet the subsequent year's requirements.~~

Section 4. [Professional Development Committee.] ~~(1) The board shall form a Professional Development Review committee and provide guidelines for its operation. The committee shall be composed of five (5) registered professional landscape architects. At least one (1) board member shall be a member of the Professional Development Review committee.~~

~~(2) Members shall be appointed by the board and serve a term of office for two (2) years.~~

~~(3) Members shall be appointed in staggered terms with three (3) members being appointed in one (1) year and two (2) members being appointed the following year.~~

~~(4) The board shall appoint a chairman and a secretary at the first meeting of every calendar year to serve a one (1) year period.~~

~~(5) The secretary shall keep minutes of the meeting to document all transactions of the committee and shall submit a report to the Board.~~

~~(6) The committee shall meet at least once per quarter of a year or when called to order by the chairman.~~

~~(7) Duties of the committee shall be to review and approve all sponsors and programs as being relevant to the practice of landscape architecture. Further, the committee shall establish the methods for documentation needed to fulfill continuing education credits for licensing.~~

Section 5. Approval of Continuing Education [Educational] Programs. (1) The board shall:

(a) Approve continuing education programs that it determines:

1. Are relevant to the practice of landscape architecture; and

2. Further the competence of a registrant; and

(b) Determine the number of clock hours allowed.

(2)(a) A sponsor shall obtain the approval of the board at least sixty (60) days prior to the date on which the sponsor intends to conduct a continuing education program that is to be offered, presented, or advertised as meeting the continuing education requirements established for registrants.

(b) A sponsor shall submit copies of the continuing education program for which it seeks approval, including materials, agenda,

presenters, teachers, or speakers.

(c) A sponsor shall not offer, present, or advertise a continuing education program to registrants as a continuing education program that meets the continuing education requirements for registrants unless it has obtained the approval of the board.

(3) A registrant who completes an educational program that has not been submitted to the board for approval may receive continuing education credit if:

(a) The registrant submits to the board a copy of the continuing education program, including materials, agenda, presenters, teachers, or speakers; and

(b) The board determines that the program is relevant to the practice of landscape architecture and furthers the competence of a registrant.

(4) Continuing education credits may be given for self-directed study if a registrant:

(a) Prior to taking the course, has:

1. Submitted to the board a copy of the course description, including a detailed summary of the course;

2. Received approval of the course by the board; and

(b) Submitted proof to the board that the registrant has passed the examination given by the sponsor.

(5) Continuing education credits shall be given for one-half (1/2) the number of hours, not to exceed seven and a half (7 1/2) hours, of a tour if the registrant has:

(a) Submitted to the board:

1. A description of the tour; and

2. Proof that the tour was related to the practice of landscape architecture as defined by KRS 323A.010(3); and

(b) Received approval of the tour by the board.

(6) The number of clock hours for which credit shall be given for a continuing education program shall be the number of clock hours approved by the board.

(7) [The sponsor or attendee shall submit to the committee documents or other materials for evaluation. The committee shall approve those activities which will further the competence of a licensee and determine the number of contact hours allowed.]

(2) The conversion of university credits to clock [contact] hours shall be [from other units is as follows]:

(a) [One (1) continuing education unit (CEU) — ten (10) contact hours.]

(b) One (1) university quarter hour of credit shall equal ten (10) clock [—thirty (30) contact] hours.

(c) [One (1) university semester hour of credit shall equal fifteen (15) clock [—forty-five (45) contact] hours.]

Section 5. (1) [6. Professional Development Requirement.] Continuing education activities [which satisfy the professional development requirement] shall include:

(a) [—but not be limited to—] College and university courses;

(b) Activities for which CEUs were approved by the board; [awarded continuing education units (CEU's)] and

(c) [these] Portions of technical meetings, seminars, or other courses that:

1. [which] Are related to landscape architectural practice or management; and

2. Approved by the board. [as approved by the Professional Development Review Committee.]

(2)(a) Landscape architects who teach [teaching] a continuing education course [program] shall be credited with clock [given —contact] hours equal to the time spent teaching the course. [program. Continuing education contact hours less than one (1) hour shall not be counted as credit towards the annual continuing education requirements. Although, partial hours in increments of one-half (1/2) of an hour above one (1) hour shall be acceptable. In addition, travel and self-directed study are acceptable with prior approval of the Professional Development Review Committee and the board.]

(b) Credit shall not be given for repeated instruction of the same course.

(3) A registrant shall obtain the board's approval prior to completing a continuing education activity that has not been accredited by the board.

Section 6. Reporting of Continuing Education Activities. (1) Upon license renewal, a registrant shall report continuing education activities for the continuing education period ending June 30.

(2) The report of continuing education activities shall include:

- (a) Name of activity;
- (b) Date of activity;
- (c) Location of activity; and
- (d) Contact hours earned.

(3) The report of continuing education activities shall contain the following affidavit of compliance:

I certify that I attended the above continuing education courses and that the hours attended are correct. By certifying that I attended the above listed courses, I understand that my license to practice Landscape Architecture in the Commonwealth of Kentucky may be revoked should I falsify any of the information or if I did not attend the listed courses. I understand that the Kentucky State Board of Examiners and Registration of Landscape Architects has the right to verify my attendance to the above listed courses. I have retained in my files a registration receipt, canceled check or other acceptable verification of my attendance to the above listed conference(s).

(4) The report of continuing education activities shall be made:

(a) On a "Continuing Education Approval Request and Affidavit (Form #CE-1)"; or

(b) By a written statement containing the:

- 1. Information specified by subsection (2) of this section; and
- 2. Affidavit of compliance established by subsection (3) of this section.

(5) The report of continuing education activities shall be:

- (a) Signed by the registrant; and
- (b) Affixed with the registrant's seal.

(6) A registrant shall maintain for two (2) continuing education years documentation verifying successful completion of the annual requirement.

~~[Section 7. Certificate of Completion. A sponsor shall provide each participant, within thirty (30) days after completion, a certificate of completion form as provided by the committee. The form shall state the participant's full name, and the number of contact hours authorized by the committee for that sponsor's program. If a sponsor does not provide a certificate of completion, the participant shall obtain an affidavit for their attendance from the board and the affidavit shall be properly completed so that credit for participation can be obtained. The certificate of completion or affidavit of completion shall be filed with the board in order to obtain the continuing education credit. Failure by a registrant to submit a truthful and accurate affidavit may result in revocation of a registrant's license. The board will maintain all records of continuing education.]~~

Section 7. Verification of Continuing Education Activities. (1) Following each renewal period, the board shall require at least five (5), and no more than fifteen (15) percent of registrants, chosen randomly, to furnish documentation of the completion of the appropriate number of CEU's for the previous renewal period, including hours carried forward from the previous year.

(2) Documentation of attendance and participation in a continuing education activity shall be made by:

- (a) Submission of official documents, such as:
  - 1. Transcripts;
  - 2. Certificates of attendance;
  - 3. Affidavits signed by instructors;
  - 4. Receipts for fees paid to a sponsor; or

(b) If evidence specified in paragraph (a) of this subsection is not issued by a sponsor, a written summary of attendance and participation.

(3) The board shall deny approval of a continuing education activity if:

(a) The sponsor of a continuing education activity had not obtained board approval prior to conducting the activity; or

(b) If a registrant had not obtained board approval prior or subsequent to completing the continuing education activity; and

(c) The board determines that the continuing education activity does not meet the requirements of Section 4(1) of this administrative regulation.

(4) If the board denies approval of a continuing education activity completed by a registrant pursuant to subsection (3) of this section, the board shall suspend the license of a registrant, if:

(a) Disapproval of the continuing education activity results in the registrant having completed less than fifteen (15) hours of continuing education for the continuing education year; and

(b) The registrant fails to:

1. Complete the number of continuing education clock hours required to meet the fifteen (15) hour continuing education requirement for the continuing education year, within sixty (60) days of notification; and

2. Notify the board on "Continuing Education Approval Request and Affidavit Form CE-1", as provided by Section 6(2) through (6) of this administrative regulation that the registrant has completed the number of continuing education clock hours required to meet the fifteen (15) hour continuing education requirements for the continuing education year, within sixty-five (65) days of notification.

Section 8. Reciprocity. (1) Credit for continuing education earned by a registrant who does not reside in Kentucky shall be granted if the registrant:

(a) Is registered in another state having continuing education requirements equal to, or more stringent than the requirements established by the provisions of this administrative regulation; and

(b) Has met all requirements for registration in the state in which the registrant resides. The state shall certify to the board that their continuing education requirements are equal to or more stringent and shall certify that the registrant has met their requirements for the current renewal period.

(2) The number of clock hours earned in a registrant's state of residence shall be credited against the clock hours required by the provisions of this administrative regulation.

(3) If a registrant obtains a license in Kentucky by reciprocity, the registrant shall be exempt from the continuing education requirements established by the provisions of this administrative regulation until the renewal period following licensure in Kentucky.

~~[Section 8. Reciprocity. Continuing education reciprocity may be granted from a registrant's resident state.~~

~~(1) If a registrant does not reside in the state, and is registered in another state having continuing education requirement equal to, or more stringent to these requirements, and the registrant meets all other requirements of that state or district to maintain registration. The state shall certify to the board that their continuing education requirements are equal to or more stringent and shall certify that the registrant has met their requirements for the current renewal period.~~

~~(2) If the required number of contact hours required for continuing education of a registrant's resident state be less than those required by the board, contact hours obtained in the registrant's resident state may be credited against the contact hours required by the board.]~~

Section 9. Exempt Registrant. (1) A registrant shall be exempt from continuing education requirements:

(a) For the period of initial licensure; or

(b) If a registrant is exempt pursuant to Section 10 of this

administrative regulation.

(2) A registrant shall be exempt from continuing education requirements if:

(a) During the continuing education year, the registrant was:

1. Employed as a landscape architect; and

2. Employed or assigned to duty outside the United States for a period exceeding 120 consecutive days in a calendar year; or

3. Unable to complete continuing education requirements due to:

a. Physical disability;

b. Personal illness or illness of a family member or dependent;

and

(b) The registrant's request for exemption under the provisions of paragraph (a) of this subsection has been reviewed and approved by the board. [A registrant may make a formal request in writing to the board that he may be granted exempt status. The board shall respond in writing sixty (60) days after the receipt to the registrant's request. An individual on said status shall be exempt from the requirements of this section during this period. The registrant shall not be allowed to use the title, "landscape architect," or to practice landscape architecture in the state during this time. The board shall update and make available for public inspection a list naming all exempt registrants. A registrant, if on exempt status for five (5) or more years, shall be classified as lapsed, and his license will be suspended and the board may proceed with a hearing for revocation or suspension of a registrant's license.]

Section 10. Inactive License. (1) Registrants may choose to inactivate their license.

(2) During the period a license is inactive, a registrant shall:

(a) Be exempt from the provisions of this administrative regulation; and

(b) Not practice landscape architecture, or use a title conveying that the registrant is a landscape architect.

Section 11. Reinstatement of Suspended or Inactive License. (1) Prior to reinstatement of a suspended license, a registrant shall complete the number of CEU's required for annual renewal of license times the number of years the license was suspended or inactive.

(2) The number of CEU's required by subsection (1) of this section shall not exceed thirty (30) clock hours.

[Section 10. Reinstatement to Active Registration. A registrant who wishes to reinstate a registration may be required as determined by the board to satisfy one (1) of the following requirements:

(1) Complete all the continuing education requirements multiplied by the number of years of exempt status.

(2) Complete the Uniform National Examination within one (1) year immediately prior to application for reinstatement.]

Section 12. Noncompliance. If a registrant, who is not exempt from the provisions of this administrative regulation, fails to satisfy the continuing education requirement for license renewal, the registrant's license shall be suspended by the board.

[Section 11. Exemption. A registrant may be exempt from the professional development educational requirements for one (1) of the following reasons:

(1) New registrants by way of UNE shall be exempt for their first renewal period.

(2) If a registrant is employed as a landscape architect and is employed or assigned to duty outside the United States for a period of time exceeding 120 consecutive days in a calendar year, he shall be exempt from the fifteen (15) contact hours required during that renewal period.

(3) Due to physical disability, illnesses, hardships, or other extenuating circumstances as reviewed and approved by the board. The board may request supporting documentation.

~~Section 12. Disciplinary Action. Failure of a registrant to satisfy the continuing education requirement for registration renewal may be cause to deny license renewal for the licensee.]~~

Section 13. Incorporation by Reference. (1) "Continuing Education Approval Request and Affidavit 3/97" Form # CE-1, is incorporated by reference.

(2) It may be inspected, copied, or obtained at Kentucky State Board of Examiners and Registration of Landscape Architects, 160 Democrat Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [Noncompliance. A registrant who does not satisfy the continuing education requirement for registration renewal shall be suspended, and the registrant so notified following the renewal date. The registrant shall comply with the continuing education requirements of the prior year within six (6) months following the renewal date or the board may proceed with a hearing for revocation of a registrant's license. The contact hours needed to fulfill the prior annual period requirement shall not be included in computing the subsequent renewal period.]

JOSEPH H. CLARK, President

APPROVED BY AGENCY: April 14, 1997

FILED WITH LRC: June 9, 1997 at noon

PUBLIC HEARING: A public hearing on these proposed administrative regulations shall be held on July 21, 1997 at 10 a.m., at the Kentucky State Board of Examiners and Registration of Landscape Architects, 160 Democrat Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 14, 1997, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on these proposed administrative regulations. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulations. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulations to: Jane Alexander Gardner, Kentucky State Board of Examiners and Registration of Landscape Architects, 160 Democrat Drive, Frankfort, Kentucky 40601, (502) 573-3263.

## REGULATORY IMPACT ANALYSIS

Contact person: Jane Alexander Gardner

(1) Type and number of entities affected: This administrative regulation will affect approximately 200 individuals per year. The individuals affected are those individuals who maintain a license to practice landscape architecture in the Commonwealth of Kentucky.

(2) Direct and indirect costs or savings on the: This administrative regulation should pose no change in costs or savings on the applicants.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received:

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received:

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body: This administrative regulation amendment should pose no change in costs or savings on the board.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues:

This administrative regulation will have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: This administrative regulation amendment will require no new revenue to implement or enforce.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: There will be no economic impact in any specific geographical areas as this regulation applies to all licensees.

(a) Geographical area in which administrative regulation will be implemented:

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were needed as this administrative regulation updates continuing education requirements.

(8) Assessment of expected benefits: This regulation will have no effect on public health or environmental welfare.

(a) Identify the effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky.

(b) State whether a detrimental effect on environment and public health would result if not implemented:

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This regulation will not conflict, overlap or duplicate any statute, administrative regulation or government policy.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? Tiering is not applicable to this administrative regulation as uniformity has been set for all licensees.

**TOURISM DEVELOPMENT CABINET**  
**Department of Fish and Wildlife Resources**  
**(Amendment)**

**301 KAR 2:111. Deer and turkey hunting on federal areas.**

RELATES TO: KRS 150.025, 150.170, 150.370, 150.390

STATUTORY AUTHORITY: KRS 150.025[~~150.170, 150.390~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to promulgate administrative regulations relating to game and fish, including seasons and limits, and to make these administrative regulations apply statewide or to limited areas of the state. This administrative regulation establishes consistent deer and turkey hunting season frameworks [seasons] on federal areas. ~~[This amendment is necessary to establish consistent season frameworks for federal areas, to allow the taking of fallow deer at Land Between the Lakes, and to change tagging requirements at Reelfoot National Wildlife Refuge.]~~

Section 1. General Requirements. (1) Unless otherwise stipulated in this administrative regulation, the provisions of 301 KAR 2:172 and 301 KAR 2:140 apply.

(2) On the areas listed in this administrative regulation, a hunter [hunters] shall:

(a) Obtain a permit from the area [permission to hunt, in the form of area permits] before hunting.

(b) Not hunt deer or turkey except on assigned hunting dates.

(c) Remain in assigned areas.

(d) Have [~~Unless exempted by KRS 150.170, have in their possession~~] the signature portion of a valid deer or turkey permit in his possession.

(e) Unless otherwise specified in this administrative regulation, tag deer with area tags issued on the area in lieu of the state deer tag.

(f) Keep the area tag attached to the deer until the carcass is processed.

(g) Check deer at a designated check station before leaving the area.

~~[(3) Hunters may obtain specific information about application procedures and deadlines, permit fees, or other hunting requirements from the appropriate federal agency.]~~

Section 2. Land Between the Lakes. (1) Deer archery or gun hunting [~~quota and youth quota hunts~~]: antlered or antlerless white-tailed or fallow deer as specified on permit on assigned areas and dates between September 15 and January 31 [~~45~~].

(2) A person shall not take more than:

(a) Two (2) deer during archery hunts; and

(b) One (1) deer during quota hunts.

(3) Turkey archery hunts: one (1) turkey of either sex during deer archery hunt.

(4) Quota hunters shall:

(a) Apply in advance at Land Between the Lakes.

(b) Check in prior to hunting.

(5) A person [Persons] shall tag a:

(a) Harvested turkey [turkeys] with the appropriate state turkey tag.

(b) Harvested deer with either:

1. The appropriate state antlered or antlerless state deer tag; or

2. A wildlife management area tag issued by Land Between the Lakes.

(6) A person:

(a) [Persons] Harvesting deer or turkey shall take the entire or field-dressed carcass to a Land Between the Lakes check station before leaving Land Between the Lakes.

(b) [(7) Persons] Shall not hunt deer or turkey with crossbows.

Section 3. Fort Campbell. (1) Deer archery or gun hunting [~~Youth, gun or archery deer hunts~~]: antlered or antlerless deer as specified on permit on assigned areas and dates between September 15 and January 31 [~~45~~].

(2) Turkey, either sex:

(a) Deer archery hunters may take turkey.

(b) Firearm season: on assigned areas and dates between October 15 and December 31.

(c) Turkeys taken at Fort Campbell are bonus birds.

(3) White turkey.

(a) A person [Hunters] may take one (1) white turkey of either sex during open Fort Campbell hunting seasons.

(b) Statewide and post limits and tagging requirements do not apply to white turkey.

Section 4. Fort Knox. Deer archery or gun hunting [~~or archery hunts~~]: antlered or antlerless deer as specified on permit on assigned areas and dates between September 15 and January 31 [~~45~~].

Section 5. Bluegrass Ordnance Depot Activity. Deer archery or gun hunting [~~or archery hunts~~]: antlered or antlerless deer as specified on permit on assigned areas and dates between September 15 and January 31 [~~45~~].

Section 6. Reelfoot National Wildlife Refuge. (1) Deer archery or gun hunting [~~quota hunts~~]: antlered or antlerless deer as specified on permit on assigned areas and dates between September 15 and

January 31 ~~[46]~~.

(2) Bag limits. A person shall not take more than:

(a) Four (4) deer.

(b) Two (2) deer by firearms. ~~[The refuge bag limit is four (4) deer. More than two (2) deer shall not be taken by gun.]~~

(3) Tagging deer.

(a) A quota hunter ~~[Quota hunters]~~ shall tag deer with a tag issued by Reelfoot National Wildlife Refuge.

(b) An archery hunter ~~[Archery hunters]~~ shall tag deer with the appropriate state tag.

(4) An archery hunter ~~[Deer hunters]~~ shall check harvested deer at the nearest open state check station.

Section 7. West Kentucky National Guard Training Site. Antlered or antlerless deer as specified on permit on assigned areas and dates between September 15 and January 31.

C. THOMAS BENNETT, Commissioner

ANN R. LATTI, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: March 7, 1997

FILED WITH LRC: June 13, 1997 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 28, 1997 at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 21, 1997, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Wilson, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4406, FAX (502) 564-6508.

#### REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: There are an estimated 211,000 deer hunters and 20,000 turkey hunters in Kentucky. An unknown portion of these hunters will hunt on the federal areas covered in this regulation.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This amendment continues long-standing hunting seasons on federal areas and will have no impact on costs or savings.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This amendment continues long-standing hunting seasons on federal areas and will have no impact on costs of doing business.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No additional compliance, reporting or paperwork requirements; hunters, as in years past, will be required to check deer taken.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The amendments to this administrative regulation will create no costs or savings to the department.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Check station results will be tabulated and analyzed.

(4) Assessment of anticipated effect on state and local revenues: The continuation of established hunting seasons on federal areas will have no effect on state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: This administrative regulation establishes permissible hunting dates on federal areas. Implementation and enforcement is the responsibility of each installation using their federal sources of revenue.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No public comments received. The continuation of established hunting seasons should have no impact on economic activities.

(b) Kentucky: No public comments received. The continuation of established hunting seasons should have no impact on economic activities.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternatives are (1) to permit hunting on federal areas only within statewide season dates and limits, or (2) not to permit hunting on these areas at all. Alternative (1) was rejected because other priorities on the areas, particularly on military installations, often preclude hunting during statewide seasons. Alternative (2) was rejected because to close these areas would deprive Kentuckians of recreational opportunities and could lead to deer overpopulation and habitat destruction.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Health benefits will result from outdoor recreational exercise by those who participate in hunting on these areas. Wildlife management afforded by regulated hunting will help maintain deer populations at levels that will prevent the environmental damage associated with overpopulation.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Slight.

(c) If detrimental effect would result, explain detrimental effect: Lack of outdoor recreational opportunity; potential for habitat destruction caused by deer overpopulation.

(9) Identify and statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering was used to the extent that each area is afforded differing season dates and other hunting requirements tailored to the specific needs of the area. Otherwise, tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates. Disparate treatment of any persons or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

## ADMINISTRATIVE REGISTER - 140

### TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (Amendment)

#### 301 KAR 2:125. Small game and furbearer hunting on federal areas.

RELATES TO: KRS 150.010, 150.025(1), 150.092(1), 150.250, [150.015, 150.021, 150.170, 150.175, 150.300, 150.340, 150.360, 150.365,] 150.370, 150.680, [150.399, 150.400, 150.410,] 150.990  
STATUTORY AUTHORITY: KRS [150.015, 150.021,] 150.025(1), [150.170, 150.175]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to promulgate administrative regulations establishing seasons for taking wildlife, and to make these administrative regulations apply to a limited area or to the entire state. This administrative regulation establishes consistent season frameworks on federal areas within the Commonwealth that lie outside the regular season dates. ~~[To establish exceptions to statewide small game and furbearer hunting on federal areas. The substance of this administrative regulation was formerly contained in 301 KAR 2:049. Substantive changes from 301 KAR 2:049 consist of changes in hunting season dates and removal of the requirements that trappers apply for a drawing at Land Between the Lakes.]~~

##### Section 1. On the areas listed in this administrative regulation:

(1) Season dates, bag limits and other requirements of 301 KAR 2:251, 2:049 and 2:050 apply unless specified otherwise in this administrative regulation.

##### (2) A person shall:

(a) Obtain permission, in the form of area permits, before hunting.  
(b) Not hunt except on assigned dates and in assigned areas;  
and

(c) Obey other conditions of use imposed by the agency controlling the area.

Section 2. In addition to the season dates specified by 301 KAR 2:251, Fort Campbell, Fort Knox, Land Between the Lakes, Bluegrass Ordnance Depot Activity and Reelfoot National Wildlife Refuge may allow hunting:

(1) For squirrels, from June 1 through June 14;

(2) For quail and rabbit, no earlier than November 1 nor later than the last day of February;

(3) For furbearers, no earlier than October 1 nor later than the last day of February;

(4) For frogs, year round.

(5) For crows, for a maximum of 124 days between September 1 and the last day of February.

Section 3. Fort Knox may allow no more than thirty (30) days of grouse hunting between October 1 and the last day of February.

Section 4. On Land Between the Lakes, a person hunting the species listed in this administrative regulation shall not use:

(1) Crossbows;

(2) Shotgun slugs or shot larger than BB; or

(3) Center-fire rifles or center-fire handguns, except during designated groundhog or coyote hunts.

[Section 2. Fort Campbell. (1) Exceptions to statewide seasons and limits.

(a) Squirrels: third Saturday in August through the last Sunday in January.

(b) Quail: Thanksgiving day through the last Sunday in February.

(c) Rabbit: Thanksgiving day through the last Sunday in February; bag limit five (5); possession limit ten (10).

(d) Raccoon, foxes and opossum: taking with gun or dogs,

Thanksgiving day through the last Sunday in January; limit one (1) per person.

(e) Groundhog: the second Saturday in May through the second Sunday in August.

(f) Coyote: May 1 through May 30 in Areas 16-51, and during legal hunts for other species.

(g) Frogs: year round; daily and possession limit, ten (10).

(h) Crow: Thanksgiving Day through the last Sunday in February.

(i) Bobcat: no open season.

(2) Pothunting requirements.

(a) Persons shall not hunt on:

1. Tuesdays or Wednesdays except when Tuesday or Wednesday is a federal holiday;

2. December 25 or January 1.

(b) Persons shall obtain permission for each hunt at Building #6645.

(c) Hunters shall stay within assigned areas.

(d) Hunters shall obtain a fifteen (15) dollar pothunting permit.

(e) Hunters between the ages of twelve (12) and eighteen (18) shall possess a valid hunter safety certificate.

Section 3. Fort Knox. (1) Exceptions to statewide seasons and limits.

(a) Furbearer trapping: no open season.

(b) Grouse: December 1 through December 31; daily limit, one (1).

(2) Post requirements.

(a) Persons shall obtain permission for each hunt at the Hunt Control Office.

(b) Hunters shall stay in their assigned areas.

(c) Hunters thirty eight (38) years of age and younger shall possess their own hunter safety certificate.

(d) Hunters shall not use pistols, centerfire rifles or crossbows.

(e) Hunters shall not possess loaded firearms:

1. While in a vehicle;

2. While in a nonhunting area;

3. During nonhunting hours; or

4. After having taken the legal game bag limit.

(f) Persons shall not operate vehicles off maintained roads, except as otherwise authorized.

Section 4. Land Between the Lakes. (1) Exceptions to statewide seasons or limits.

(a) Squirrels:

1. The third Saturday in August through the fourth Friday in September;

2. December 1 through January 31; and

3. During deer archery season by legally licensed and equipped deer archery hunters.

(b) Quail and rabbit: December 1 through the last day of February.

(c) Raccoon and opossum: Tuesday, Thursday, Friday and Saturday nights, December 1 through January 31 in designated areas.

(d) Fox chasing: the third Saturday in August through the third Saturday in September south of Highway 68, from sunset to sunrise.

(e) Fox and bobcat gun and archery hunting: December 1 through January 31.

(f) Groundhog: March 15 through March 31, and during the LBL deer archery season by legally licensed and equipped deer archery hunters.

(g) Coyote: daylight hours only by legally licensed hunters during LBL open seasons with firearms or archery equipment specified for that season.

(h) Trapping season, furbearers and bobcats: fourteen (14) consecutive days beginning the second Monday in January.

(i) Crow: December 1 through the last day of February.

~~(2) General requirements.~~

~~(a) Persons hunting the species listed in this section shall not use:~~

~~1. Crossbows.~~

~~2. Shotgun slugs or shot larger than BB.~~

~~3. Center fire rifles or center fire handguns, except that groundhog hunters may use center fire rifles during the spring groundhog season.~~

~~(b) Hunters shall remove harvested groundhogs from Land Between the Lakes.~~

~~(c) Persons shall not use firearms to hunt groundhogs in Hunt Area 8 or the portion of Hunt Area 9 designated as the off-highway vehicle area.~~

~~(3) Trapping requirements.~~

~~(a) Persons shall obtain Land Between the Lakes Hunter Use Permit before trapping.~~

~~(b) Persons shall not trap outside of designated areas.~~

~~(c) Trappers shall report their harvest in accordance with LBL instructions.~~

~~(4) Field trials and dog training requirements.~~

~~(a) Bird dog, beagle and raccoon hound training season: October 1 through October 31 in designated areas.~~

~~(b) Field trials: September 1 through March 31, on a scheduled basis only.~~

~~(c) Hunters shall equip their dogs with collars bearing the owner's name, address, and telephone number.~~

~~(d) Hunters shall not use dogs from the fourth Saturday in September through November 30, except during authorized field trials in designated dog training hunt areas.~~

~~(e) Persons shall submit written requests for field trials at least ten (10) days prior to the proposed trial date.~~

~~(f) Approval to conduct field trials shall be granted to established field trial clubs with a department field trial permit issued pursuant to KRS 150.370(2)(b).~~

~~(g) Field trial participants shall be listed on the club roster for that trial.~~

~~(5) Requirements for bobcat hunting and trapping.~~

~~(a) The limit is two (2) bobcats per person per season by any legal method.~~

~~(b) The bobcat harvest quota is twenty four (24). If the quota of twenty four (24) bobcats will be filled prior to January 31, the season shall close. Land Between the Lakes shall give a minimum of twenty four (24) hours notice of the time and date of closure.~~

~~(c) Hunters or trappers shall have bobcats tagged by taking the entire carcass, skinned or unskinned, to LBL check stations, Golden Pond Administrative Office, or Patrol Office for checking:~~

~~1. Before leaving LBL; or~~

~~2. Within forty eight (48) hours of harvest.~~

~~(d) Persons shall not hunt or call bobcats except during daylight hours.~~

~~(e) Persons shall not use electronic or amplified calls to hunt bobcats.~~

~~Section 5. Reelfoot National Wildlife Refuge. (1) Exceptions to statewide seasons or limits.~~

~~(a) Squirrels: the last Saturday in August through September 30 in areas designated by signs as open to public hunting.~~

~~(b) Raccoon:~~

~~1. Four (4) consecutive nights beginning the third Wednesday in October;~~

~~2. Four (4) consecutive nights beginning the fourth Wednesday in October;~~

~~3. Hunting hours, 7:30 p.m. to 12 midnight.~~

~~4. No bag or possession limits.~~

~~5. Hunters shall check in and out at designated check stations, and shall present harvested raccoons for inspection and tagging at the refuge check station.~~

~~(2) General requirements.~~

~~(a) Hunters shall have in their possession a Refuge Hunt Brochure.~~

~~(b) Persons shall not hunt other species on this area.~~

~~(c) Hunters shall remain in assigned areas.]~~

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: March 7, 1997

FILED WITH LRC: June 13, 1997 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 28, 1997 at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 21, 1997, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Wilson, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4406, FAX (502) 564-6508.

REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: Approximately 15,000 small game hunters utilize the federally owned areas covered by this administrative regulation.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation continues seasons in place for many years and will have no impact on cost of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation will have no impact on costs of doing business.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: This administrative regulation continues a requirement that persons apply in advance for some hunts and check in and out.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues:

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds will be expended by enforcement personnel on federal installations; Fish and Game Fund monies will be used for any state enforcement of the provisions of this administrative regulation on LBL.

(6) To the extend available from the public comments received,

## ADMINISTRATIVE REGISTER - 142

the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No public comments received. This administrative regulation will have no economic impact, since it continues seasons already in place.

(b) Kentucky: No economic impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternates are (1) to permit hunting on federal areas under statewide regulations, or (2) close the areas to hunting. Alternative (1) was rejected because of the need for specialized requirements for the use of LBL by hunters. Alternative (2) was rejected because closing these area would mean a loss of recreational activity and the loss of economic activities associated with that recreation.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Controlling hunter access and activities will lead to increased public safety and better management of the wildlife resources at these areas.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: An increased potential for hunting accidents if access for some popular hunts were not controlled, and a decrease in the effectiveness of wildlife management practices.

(9) Identify and statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates. Disparate treatment of any persons of entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management (Amendment)

#### 401 KAR 46:060. Waste Tire Trust Fund Loan Program.

RELATES TO: KRS ~~[224.43,]~~ 224.50-820 to 224.50-844

STATUTORY AUTHORITY: KRS 224.10-100, 224.50-820, 224.50-834

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.50-820 establishes the waste tire trust fund to be used for programs to eliminate existing and prevent future accumulations of waste tire piles. KRS 224.50-834 requires the cabinet to establish the loan fund to make low interest loans available to private interests. ~~[Pursuant to KRS 224.43-010 it is the policy of the cabinet to encourage a regional approach to solid waste management.]~~ This administrative regulation establishes eligibility requirements, application requirements, and prioritization criteria to be used by the Natural Resources and Environmental Protection Cabinet to administer this program. This administrative regulation implements KRS 224.50-834; there are no federal statutes or administrative regulations governing waste tire loans.

Section 1. Applicability. This administrative regulation applies to a person who wishes to apply for a waste tire trust fund loan.

Section 2. ~~[General]~~ Eligibility for Loans. ~~[Requirements:]~~ (1) When the cabinet determines that waste tire trust fund loans can be made available, a ~~[Any]~~ person ~~[regularly engaged in a recycling or recovered material processing business, or if entering the field has made prior arrangements in the form of written commitments for supplies, equipment and personnel, or a facility permitted by the cabinet for incineration of waste tires for the recovery of energy]~~ may apply for a loan ~~[financial assistance]~~ from the waste tire trust fund for a ~~[any]~~ project that meets one (1) of the criteria listed in KRS 224.50-834.

(2) The applicant shall possess the legal authority to construct or acquire, operate, and maintain the project for which a loan ~~[assistance]~~ is sought ~~[from the waste tire trust fund]~~.

(3) The applicant shall possess the legal authority to incur a pledge to repay the [any] loan [assistance].

~~(4) [The project shall comply with goals and objectives of KRS 224.50-824 and 224.50-834.]~~

~~(5) The proposed project cost estimates shall be reasonable and attainable given the geographic location of the project, current pricing trends, required professional services, and any other factors that may have a bearing on the project.~~

~~(6) The applicant shall assure continued operation and maintenance of the project.~~

~~(7) The proposed source of revenue shall be sufficient to operate and repay any debt financing associated with the project.~~

~~(8) The applicant shall have approval by resolution from the local governing body as to its consistency with the approved area solid waste management plan.~~

~~(9) The applicant, ~~[nor any of its]~~ key personnel, and ~~[nor any]~~ third party operator shall not:~~

(a) Intentionally misrepresent or conceal a [any] material fact in the application;

(b) Obtain or attempt to obtain the loan by misrepresentation or concealment;

(c) Have been convicted by final judgment of any felony within five (5) years preceding the filing of the application; or [and]

(d) Have been adjudged by an administrative agency or a court to have violated an [the] environmental protection statute [laws] or administrative regulation [regulations] of the United States, the Commonwealth of Kentucky, or any other state, and the cabinet determines that the conviction or adjudication is sufficiently probative of the applicant's inability or unwillingness to operate the facility in a lawful manner.

Section 3. Application for Loans. (1) When the cabinet determines that waste tire trust fund loans can be made available, the cabinet shall advertise by public notice. The public notice shall be published pursuant to KRS 424.130 in major newspapers with statewide circulation. The public notice shall include:

(a) The type of project the cabinet will consider funding;

(b) The amount of money available; and

(c) The due date for submittal of applications.

(2) A person may apply to the cabinet for a loan as specified in the public notice by submitting a completed "Waste Tire Trust Fund Application for Assistance" DEP Form 7101C, incorporated by reference in Section 6 of this administrative regulation. The application shall be submitted to the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky, 40601. An application received by the cabinet after the due date shall be denied.

(3) The application shall be completed and accurate.

(4) The cabinet shall prioritize the applications submitted in accordance with the public notice based on:

(a) The proposal's consistency with cabinet objectives;

(b) The proposal's consistency with the goals of KRS 224.50-834;

- (c) The indicated cost of the project and its forecasted benefits;
- (d) The credit history of the applicant; and
- (e) The past environmental performance of the applicant.

[Section 2. Application Submission Requirements and Review Process. (1) The application form, DEP 0042, entitled "Waste Tire Trust Fund Application for Loan Assistance" (October 1992) and its requirements are hereby incorporated by reference. Copies may be obtained from the cabinet's Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601 during the normal work hours of 8 a.m. to 4:30 p.m., Monday through Friday. The applicant shall submit the original and three (3) copies of the completed application form to the Division of Waste Management.

(2)(a) The cabinet shall review and prioritize applications in cycles. The first application cycle shall begin on May 1, 1993. The cabinet shall accept applications from May 1, 1993 through COB June 30, 1993, at which time all applications received during this period shall be reviewed and prioritized. Subsequent application cycles shall be annual, beginning on August 1 and ending COB August 31, in each year that the balance in the waste tire trust fund on June 30 exceeds \$335,000.

(b) The initial and subsequent cycles shall be advertised in public notices, which shall be published pursuant to KRS 424.130 in major newspapers with statewide circulation and distributed to all county judge executives and mayors of first and second class cities, as well as other parties who have notified the division of an interest in submitting an application. The public notice for the initial cycle shall be published no earlier than April 10, 1993 and no later than April 24, 1993. For years in which subsequent cycles will be held, the public notice shall be published no earlier than July 11 and no later than July 25.

(3) The application shall be properly completed and accurate.

Section 3. Criteria for Prioritizing Project Applications. The cabinet shall prioritize all acceptable applications received for each application cycle using a scoring system that measures the degree to which the proposed project:

- (1) Promotes reuse and recycling efforts of waste tires or waste tire material;
- (2) Eliminates existing and prevents future waste tire piles;
- (3) Satisfies the identified needs of the project service area;
- (4) Efficiently serves the area geographically and by population;
- (5) Is needed within the proposed service area;
- (6) Is a regional project; and
- (7) Is financially sound. The financial review shall be conducted to consider, but not be limited to, the following:

- (a) Appropriateness of the type of revenues pledged for repayment of a loan and operation and maintenance cost of the project;
- (b) Validity of the assumptions used to project any revenues pledged to the project;
- (c) Assurance that revenues pledged to the project will be collected;
- (d) Security of all other sources proposed to fund the project costs;
- (e) Credit history of the applicant;
- (f) Reasonableness of the projections for operation and maintenance cost of the project; and
- (g) Any legal restrictions on the applicant to pledge the proposed revenues for repayment of a loan from the waste tire trust fund or operation and maintenance of the project.]

Section 4. Approval of Loans. [Conditions for Assistance from the Waste Tire Trust Fund.] (1) The cabinet shall provide a loan agreement to the applicant if the application is approved for funding.

(2) Within thirty (30) days after receiving the loan agreement from the cabinet indicating that the application has been approved for funding, the applicant shall execute the [a loan] agreement with the

cabinet. The agreement shall set [that sets] forth the terms and conditions [for completion] of the project, and actions thereafter. Failure to sign and return the agreement to the cabinet within thirty (30) days may result in denial of the application. [This shall generally coincide with award of construction or acquisition contracts for the project. No monies shall be released to the applicant until the loan agreement is executed.

(2) All recipients of loans from the waste tire trust fund shall submit quarterly reports to the cabinet using the form DEP 0042A, entitled "Waste Tire Trust Fund Loan Report" (October 1992). The form and its requirements are hereby incorporated by reference. Copies may be obtained from the cabinet's Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky, 40601, during the normal working hours of 8 a.m. to 4:30 p.m. Monday through Friday.]

Section 5. Project Completion and Release of Loan Funds. (1) [(3)] The recipient of the loan [applicant] shall be responsible for its [the] repayment [of any loan], and for the continued operation and maintenance of any facility or other project funded by the cabinet until final repayment of the loan. If the project is to be constructed or acquired, operated, maintained, or managed by someone other than the recipient [a third party under contract, management agreement, or written lease], the recipient [applicant] shall continue to be responsible for compliance with the requirements of this section.

(2) The recipient shall retain ownership of any facilities and equipment financed by the loan until the final repayment.

(3) The recipient shall submit an itemized list of expenditures with copies of invoices or other supporting documentation to the cabinet as specified in the loan agreement. Loan funds shall be released as specified in the loan agreement for actual costs incurred.

(4) The recipient shall submit progress reports to the cabinet, as specified in the agreement, that indicate the progress of the project.

[(4)] Upon determination of the actual bid cost of a project, the funding awarded by the cabinet may be increased by up to five (5) percent of the original funding commitment. Five (5) percent of the funds committed shall be reserved for this purpose until the funded projects are completed.

(5) Funds shall be released to the applicant on a monthly basis, for actual project costs incurred. An itemized list of expenditures with copies of invoices or other supporting documentation shall be submitted to the cabinet for payment.

(6) The applicant, upon completion of the project, funded by the waste tire trust fund, shall comply with KRS Chapters 100 and 224 and all administrative regulations pertaining to solid waste management.

(7) The applicant shall retain ownership of the facilities and equipment financed by the waste tire trust fund during the useful life of the facility or until the final repayment of the loan, whichever is shorter.]

(5) A [(8)] Any proposed change in the project or in the information provided in the original application, shall require prior approval of the cabinet. [The cabinet may require approval by the local governing body.]

(6) [(9)] The interest rate shall be established in the loan agreement and shall be based on the index rate at the time of the loan less two (2) percent. The index rate is the average of the Bond Buyer's Index of twenty (20) G. O. Bonds as published weekly in the Bond Buyer (a financial newspaper circulated in New York) calculated based on the weeks falling within each calendar quarter. This average shall be rounded to the nearest one-tenth (.1) of one (1) percent.

(7) [(10)] Interest shall be payable to the cabinet semiannually beginning with the next successive interest payment date established in the loan agreement after the applicant receives funds.

(8) [(11)] Principal shall be payable to the cabinet semiannually beginning with the next successive principal payment date established in the executed loan agreement. The total term of principal repayment shall not exceed thirty (30) years, or the useful life of the facilities or

[and] equipment financed with the loan, whichever comes first.

Section 6. Incorporation by Reference. (1) The following document is hereby incorporated by reference "Waste Tire Trust Fund Application for Assistance" DEP Form 7101C (February 1997).

(2) The document incorporated by reference in subsection (1) of this section is available for inspection and copying at the Solid Waste Branch of the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky, 40601, from 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, excluding state holidays.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: June 12, 1997

FILED WITH LRC: June 13, 1997 at 10 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Wednesday, July 30, 1997, at 2 p.m. eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by July 23, 1997. If a notification of intent to attend the hearing has not been received by that date, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by July 23, 1997 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the close of the public hearing on July 30, 1997. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Microsoft Word on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Microsoft Word or 3.5 inch diskettes not be available. The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodations for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by July 23, 1997.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, phone: (502) 564-2225, ext. 221, fax: (502) 564-4049.

#### REGULATORY IMPACT ANALYSIS

Contact Person: James Hale

1. Type and number of entities affected: This administrative regulation effects any person who wishes to apply for a waste tire trust fund loan when money is made available by the cabinet. The number of loans that the cabinet will be able to issue is dependent upon the amount of money available in the waste tire trust fund. The waste tire trust fund is funded by the waste tire fee assessed on tire retailers in accordance with KRS 224.50-822.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public

comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The cabinet will experience no additional costs by promulgating this amendment to this regulation. As waste tire trust fund loans are made available by the cabinet, there will be a small amount of revenue generated from the interest accrued on the loans. Issuing loans to third parties for needed projects should also save the cabinet money by eliminating waste tire piles that the cabinet would otherwise have to cleanup. By broadening the scope of the Waste Tire Trust Fund Loan Program, local and private entities will be able to resolve problems caused by waste tire piles at a local level rather than the cabinet assuming this direct responsibility. These amendments also make the loan application and issuance process more efficient.

2. Continuing costs or savings: Costs and savings, as indicated above, will continue for the second and subsequent years.

3. Additional factors increasing or decreasing costs: If legislative action is taken to eliminate the waste tire fee exemption, additional funds will be available in the waste tire trust fund allowing the cabinet to issue additional loans for waste tire projects.

b. Reporting and paperwork requirements: There will be no extra paperwork requirements as a result of these amendments.

4. Assessment of anticipated effect on state and local revenues: If a state or local government applies for and is granted a waste tire trust fund loan, their revenue would be affected and they would be responsible to repay the waste tire trust fund loan with interest. Otherwise, there are no anticipated effects on the state and local revenue due to amendment of this regulation.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: KRS 224.50-820 provides that the waste tire trust fund may be used to pay for the cost to administer the waste tire control program. Historically the waste tire trust fund has failed to generate adequate funds to operate the waste tire control program. Expenditures not covered by the waste tire trust fund will be covered by the general fund.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation is being amended to fully implement the statutory provisions of KRS 224.50-834 and achieve the goals of KRS 224.50-820 to 224.50-846. In order to achieve these goals, there are no other alternatives.

8. Assessment of expected benefits of the administrative regulation: These amendments will fully implement the statutory provisions of KRS 224.50-834 by expanding the type and number of persons eligible to receive a waste tire trust fund loan. By broadening the scope of the waste tire trust fund loan program, local and private entities will be able to resolve problems caused by waste tire piles at a local level rather than the cabinet assuming this direct responsibility. These amendments also make the loan application and issuance process more efficient.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: This administrative regulation will be implemented throughout the Com-

monwealth. This administrative regulation will improve public health and environmental welfare by allowing persons to apply for a waste tire trust fund loan for projects that minimize threats to public health and the environment caused by the unmanaged accumulation and processing of waste tires.

b. State whether a detrimental effect on the environment and public health would result if not implemented: These amendments will fully implement the statutory provisions of KRS 224.50-834 by expanding the type and number of persons eligible to receive a waste tire trust fund loan. By broadening the scope of the Waste Tire Trust Fund Loan Program, local and private entities will be able to fund projects that minimize threats to public health and the environment caused by the uncontrolled accumulation and processing of waste tires. Without these amendments, a detrimental effect may occur.

c. If detrimental effect would result, explain detrimental effect: Unmanaged waste tire accumulations and processing activities can result in threats to the environment and public safety due to hazards from fires, mosquitoes, and rodents. Aesthetic environmental value could also be diminished.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? This administrative regulation only applies to persons who apply for waste tire trust fund loans.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.50 requires the cabinet to adopt administrative regulations and implement a waste tire removal and control program.

2. State compliance standards: There is no federal mandate for this administrative regulation. This administrative regulation establishes eligibility requirements, application requirements, and prioritization criteria to be used by the Natural Resources and Environmental Protection Cabinet to administer the Waste Tire Trust Fund Loan Program.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that applies for a waste tire trust fund loan.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the

cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.50 requires the cabinet to adopt administrative regulations to implement a waste tire removal and control program. This administrative regulation establishes eligibility requirements, application requirements, and prioritization criteria to be used by the Natural Resources and Environmental Protection Cabinet to administer the Waste Tire Trust Fund Loan Program.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): Local governments may apply for loan assistance from the waste tire trust fund when loan money is made available by the cabinet. Projects funded from waste tire trust fund loans could potentially generate revenue for the local government.

Expenditures (+/-): Local governments may apply for loan assistance from the waste tire trust fund when loan money is made available by the cabinet. Local governments receiving loans from the waste tire trust fund must repay the loan and are subject to interest based on the index rate at the time of the loan, minus two percent.

Other Explanation: None

#### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management (Amendment)

#### 401 KAR 46:070. Waste Tire Trust Fund Grant Program.

RELATES TO: KRS ~~[224.43,]~~ 224.50-820 to 224.50-844

STATUTORY AUTHORITY: KRS 224.10-100, 224.50-820, 224.50-828 ~~[224.50-834]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.50-820 establishes the waste tire trust fund to be used for programs to eliminate existing and prevent future accumulations of waste tire piles. KRS 224.50-828 allows the cabinet to enter into agreements with any person to remove existing waste tire piles. ~~[for the removal of existing waste tire piles, or for the removal of waste tires collected by the local government through a local community sponsored program. KRS 224.43-340 requires each county to be responsible for implementing the solid waste management plan which is required to include an inventory and description of all existing solid waste management facilities and activities, and identification and assessment of current and future solid waste management problems faced by the area. For this reason, grants should be awarded to the cities, counties, or urban county governments to be used to implement a waste tire removal and control program pursuant to KRS 224.50-824 and 224.50-828. Pursuant to KRS 224.43-010, it is the policy of the cabinet to encourage a regional approach to solid waste management.]~~ This administrative regulation establishes eligibility requirements, application requirements, and prioritization criteria to be used by the cabinet to administer the Waste Tire Trust Fund [this] Program. This administrative regulation implements KRS 224.50-820 and 224.50-828; there are no federal statutes or administrative regulations governing waste tire grants.

Section 1. Applicability. This administrative regulation applies to a person who wishes to apply for a waste tire trust fund.

Section 2. Eligibility for Grants. (1) When the cabinet determines that waste tire trust fund grants can be made available, a person may apply for financial assistance from the waste tire trust fund for a

project that meets one (1) of the criteria listed in KRS 224.50-828.

(2) The applicant shall possess the legal authority to construct or acquire, operate, and maintain the project for which a grant is sought.

(3) The applicant, key personnel, or a third-party operator shall not:

(a) Intentionally misrepresent or conceal a material fact in the application;

(b) Obtain or attempt to obtain the grant by misrepresentation or concealment;

(c) Have been convicted by final judgment of any felony within five (5) years preceding the filing of the application; or

(d) Have been adjudged by an administrative agency or a court to have violated an environmental protection statute or administrative regulation of the United States, the Commonwealth of Kentucky, or any other state, and the cabinet determines that the conviction or adjudication is sufficiently probative of the applicant's inability or unwillingness to operate the facility in a lawful manner.

Section 3. Application for Grants. (1) When the cabinet determines that waste tire trust fund grants can be made available, the cabinet shall advertise by public notice. The public notice shall be published pursuant to KRS 424.130 in major newspapers with statewide circulation. The public notice shall include:

(a) The type of project the cabinet will consider funding;

(b) The amount of money available; and

(c) The due date for submittal of applications.

(2) A person may apply to the cabinet for a grant as specified in the public notice by submitting a completed "Waste Tire Trust Fund Application for Assistance" DEP Form 7101C, incorporated by reference in Section 6 of 401 KAR 46:060. The application shall be submitted to the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601. An application received by the cabinet after the due date shall be denied.

(3) The application shall be completed and accurate.

(4) The cabinet shall prioritize the applications submitted in accordance with the public notice based on:

(a) The proposal's consistency with cabinet objectives;

(b) The proposal's consistency with the goals of KRS 224.50-824 through 224.50-832;

(c) The indicated cost of the project and its forecasted benefits;

(d) The credit history of the applicant; and

(e) The past environmental performance of the applicant.

Section 4. Approval of Grants. (1) The cabinet shall provide a grant agreement to the applicant if the application is approved for funding.

(2) Within thirty (30) days after receiving a grant agreement from the cabinet indicating that the application has been approved for funding, the applicant shall execute the agreement with the cabinet. The agreement shall set forth the terms and conditions of the project and actions thereafter. The agreement shall include a pledge by the recipient to use revenues generated by the project to further the project or to support other activities consistent with goals of KRS 224.50-824. Failure to sign and return the agreement to the cabinet within thirty (30) days may result in denial of the application.

Section 5. Project Completion and Release of Grant Funds. (1) The recipient of the grant shall execute the terms of the agreement and ensure that the project is completed in accordance with the agreement. If the project is to be constructed or acquired, operated, maintained, or managed by someone other than the recipient, the recipient shall continue to be responsible for compliance with the requirements of this section.

(2) The recipient shall retain ownership of any facilities and equipment financed by the grant until completion of the agreement.

(3) The recipient shall submit an itemized list of expenditures with copies of invoices or other supporting documentation to the cabinet

as specified in the grant agreement. Grant funds shall be released as specified in the grant agreement for actual costs incurred.

(4) The recipient shall submit progress reports to the cabinet, as specified in the agreement, that indicate the progress of the project.

(5) A proposed change in the project or in the information provided in the original application shall require prior approval of the cabinet. [General Eligibility Requirements. (1) Eligible applicants for financial assistance from the Waste Tire Trust Fund Grant Program shall be any city, county or urban county government.

(2) The proposed project cost estimates shall be reasonable and attainable given the geographic location of the project, current pricing trends, required professional services, and any other factors that may have a bearing on the project.

(3) The applicant shall have an approved area solid waste management plan or be a part of an approved area solid waste management plan.

(4) The application shall be properly completed and accurate.

(5) If the project is to be performed by someone other than the applicant, that person shall not have been convicted by final judgment of any felony within five (5) years preceding the filing of the application; or been adjudged by an administrative agency or a court to have violated the environmental protection laws or administrative regulations of the United States, the Commonwealth, or any other state, and the cabinet determines that the conviction or adjudication is sufficiently probative of the applicant's inability or unwillingness to operate the facility in a lawful manner. The applicant shall be responsible for assuring compliance with KRS Chapter 335B, regarding the public employment qualifications of the person performing the project.

(6)(a) No more than seventy-five (75) percent of the cost of a project may be funded by a grant from the waste tire trust fund.

(b) Each applicant shall provide other funding equal to at least twenty-five (25) percent of the cost of a project which may consist of a local contribution, funds derived from grants or loans from other sources, or in-kind services, if the value of such services or property can be documented to the cabinet's satisfaction.

Section 2. Application Submission Requirements and Review Process. (1) The application form, DEP 0043, entitled "Waste Tire Trust Fund Application for Grant Assistance" (October 1992) and its requirements are hereby incorporated by reference. Application forms may be obtained from the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky, 40601, during the normal working hours of 8 a.m. through 4:30 p.m., Monday through Friday. The applicant shall submit the original and three (3) copies of the completed application form to the Division of Waste Management.

(2)(a) The cabinet shall review and prioritize applications in cycles. The first application cycle shall begin on May 1, 1993. The cabinet shall accept applications from May 1, 1993 through COB on June 30, 1993, at which time all applications received during this period shall be reviewed and prioritized. Subsequent application cycles shall be annual, beginning on August 1 and ending COB August 31, in each year that the balance in the waste tire trust fund on June 30 exceeds \$335,000.

(b) The initial and subsequent cycles shall be advertised in public notice, which shall be published pursuant to KRS 424.130 in major newspapers with statewide circulation and distributed to all county judge executives and mayors of first and second class cities, as well as any other parties that have notified the division of an interest in submitting an application. The public notice for the initial cycle shall be published no earlier than April 10, 1993 and no later than April 24, 1993. For years in which subsequent cycles will be held, the public notice shall be published no earlier than July 11 and no later than July 25.

Section 3. Criteria for Prioritizing Project Applications. (1) The cabinet shall prioritize all acceptable applications received for each

application cycle using a scoring system which measures the degree to which the proposed project:

- (a) Addresses a significant environmental hazard;
- (b) Assists owners of less than 500 waste tires with the cost of removal;
- (c) Promotes reuse and recycling efforts of waste tires or waste tire materials;
- (d) Complies with the goals and objectives of KRS 224.50-824 through 224.50-832;
- (e) Efficiently serves the area geographically and by population;
- (f) Is consistent with the objectives of the approved area solid waste management plan;
- (g) Is needed within the proposed service area;
- (h) Complies with the implementation schedule set forth in the area solid waste management plan;
- (i) Is a regional project; and
- (j) Is financially viable. The financial review shall consider, but not be limited to the following:
  1. Validity of the assumptions used to project any revenues pledged to the project;
  2. Assurance that revenues pledged to the project will be collected;
  3. Security of all other sources proposed to fund the project costs; and
  4. Reasonableness of the projections for operation and maintenance cost of the project.
- (2) Projects that are proposed with the greatest percentage of matching funds shall receive a higher priority after the review of criteria in subsection (1) of this section.

Section 4. Conditions for Assistance from the Waste Tire Trust Fund. (1) The applicant shall execute a grant agreement with the cabinet that sets forth the terms and conditions for completion of the project and actions thereafter. The grant agreement shall include a pledge by the grant recipient to use revenues generated by the project to further the project or to support other activities consistent with the approved area solid waste management plan. No monies shall be released to the applicant until the grant agreement is executed.

(2) All recipients of grants from the waste tire trust fund shall submit quarterly reports to the cabinet using the form DEP 0043A entitled, "Waste Tire Trust Fund Grant Report" (October 1992). The form and its requirements are hereby incorporated by reference. Copies may be obtained from the cabinet's Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky, 40601, during the normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday.

(3) The applicant shall be responsible for the continued operation and maintenance of any facility or other project funded by the cabinet if applicable. If the project is to be operated, maintained, or managed by a third party under contract, management agreement, or written lease, the applicant shall continue to be responsible for compliance with the requirements of this section.

(4) Upon determination of the actual bid cost of a project, the funding awarded by the cabinet may be increased by up to five (5) percent of the original funding commitment.

(5) Funds shall be released to the applicant on a monthly basis for actual project costs incurred. An itemized list of expenditures with copies of invoices or other supporting documentation shall be submitted to the cabinet for payment.

(6) The applicant, upon completion of the project funded by the waste tire trust fund, shall comply with KRS Chapters 100 and 224 and all administrative regulations pertaining to solid waste management.

(7) If applicable, the applicant shall retain ownership of the facilities and equipment financed by the waste tire trust fund during the useful life of the facility.]

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: June 12, 1997

FILED WITH LRC: June 13, 1997 at 10 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Wednesday, July 30, 1997, at 2 p.m. eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by July 23, 1997. If a notification of intent to attend the hearing has not been received by that date, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by July 23, 1997 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the close of the public hearing on July 30, 1997. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Microsoft Word on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Microsoft Word or 3.5 inch diskettes not be available. The Natural Resources and Environmental Protection cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodations for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by July 23, 1997.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, phone: (502) 564-2225, ext. 221, fax: (502) 564-4049.

#### REGULATORY IMPACT ANALYSIS

Contact Person: James Hale

1. Type and number of entities affected: This administrative regulation affects any person who wishes to apply for a waste tire trust fund grant when money is made available by the cabinet. The number of grants that the cabinet will be able to issue is dependent upon the amount of money available in the waste tire trust fund. The waste tire trust fund is funded by the waste tire fee assessed on tire retailers in accordance with KRS 224.50-822.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The cabinet will experience additional short term costs in order to fund waste tire projects with waste tire trust fund grants. However, by broadening the scope of the Waste Tire Trust Fund Grant Program, local and private entities will be able to resolve problems caused by waste tire piles at a local level rather than the cabinet assuming this direct responsibility. Overall, issuing grants to third parties for needed projects should save the cabinet money. By broadening the scope of the Waste Tire Trust Fund Grant Program, local and private entities will be able to resolve problems caused by waste tire piles at a local level rather than the cabinet assuming this direct responsibility. These amendments also make the grant application and issuance process more efficient.

2. Continuing costs or savings: Costs and savings, as indicated above, will continue for the second and subsequent years.

3. Additional factors increasing or decreasing costs: If legislative action is taken to eliminate the waste tire fee exemption, additional funds will be available in the waste tire trust fund allowing the cabinet to issue additional grants for waste tire projects.

b. Reporting and paperwork requirements: There will be no extra paperwork requirements as a result of these amendments.

4. Assessment of anticipated effect on state and local revenues: If a state or local government applies for and is granted a waste tire trust fund grant, their revenue would be increased to fund waste tire projects approved by the cabinet. Otherwise, there are no anticipated effects on state and local revenue due to amendment of this regulation.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: KRS 224.50-820 provides that the waste tire trust fund may be used to pay for the cost to administer the waste tire control program. Historically the waste tire trust fund has failed to generate adequate funds to operate the waste tire control program. Expenditures not covered by the waste tire trust fund will be covered by the general fund.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation is being amended to fully implement the statutory provisions of KRS 224.50-828 and achieve the goals of KRS 224.50-820 to 224.50-846. In order to achieve these goals, there are no other alternatives.

8. Assessment of expected benefits of the administrative regulation: These amendments will fully implement the statutory provisions of KRS 224.50-834 by expanding the type and number of persons eligible to receive a waste tire trust fund grant. By broadening the scope of the Waste Tire Trust Fund Grant Program, local and private entities will be able to resolve problems caused by waste tire piles at a local level rather than the cabinet assuming this direct responsibility. These amendments also make the grant application and issuance process more efficient.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: This administrative regulation will be implemented throughout the Commonwealth. This administrative regulation will improve public health and environmental welfare by allowing persons to apply for a waste tire trust fund grant for projects that minimize threats to public health and the environment caused by the unmanaged accumulation and processing of waste tires.

b. State whether a detrimental effect on the environment and public health would result if not implemented: These amendments will fully implement the statutory provisions of KRS 224.50-828 by expanding the type and number of persons eligible to receive a waste tire trust fund grant. By broadening the scope of the Waste Tire Trust Fund Grant Program, local and private entities will be able to fund

projects that minimize threats to public health and the environment caused by the uncontrolled accumulation and processing of waste tires. Without these amendments, a detrimental effect may occur.

c. If detrimental effect would result, explain detrimental effect: Unmanaged waste tire accumulations and processing activities can result in threats to the environment and public safety due to hazards from fires, mosquitoes, and rodents. Aesthetic environmental value could also be diminished.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? This administrative regulation only applies to persons who apply for waste tire trust fund grants.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.50 requires the cabinet to adopt administrative regulations and implement a waste tire removal and control program.

2. State compliance standards: There is no federal mandate for this administrative regulation. This administrative regulation establishes eligibility requirements, application requirements, and prioritization criteria to be used by the Natural Resources and Environmental Protection Cabinet to administer the Waste Tire Trust Fund Grant Program.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that applies for a waste tire trust fund grant.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.50 requires the cabinet to adopt administrative regulations to implement a waste tire removal and control program. This administrative regulation establishes eligibility requirements, application requirements, and prioritization criteria to be used by the cabinet to administer the Waste Tire Trust Fund Grant Program.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be

determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): Local governments may apply for grant assistance from the waste tire trust fund when grant money is made available by the cabinet. Projects funded from waste tire trust fund grants could potentially generate revenue for the local government. Grants are not subject to repayment.

Expenditures (+/-): Expenditures will not be affected.

Other Explanation: None

**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET  
Department for Environmental Protection  
Division of Waste Management  
(Amendment)**

**401 KAR 47:150. Special types of permits.**

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224 requires the cabinet to adopt rules and administrative regulations for the management, processing, and disposal of wastes. KRS 224.40-305 requires that persons engaging in the management, processing, and disposal of waste obtain a permit. This chapter establishes the permitting standards for solid waste sites or facilities, the standards applicable to all solid waste sites or facilities, and the standards for certification of operators. An overview of the permit program is found in Section 1 of 401 KAR 47:080. This administrative regulation sets forth the requirements for permits-by-rule; emergency permits; and research, development, and demonstration permits. There are no federal statutes or administrative regulations governing the subject matter addressed in this administrative regulation.

Section 1. Permit-by-rule. ~~[Notwithstanding any other provision of this chapter, the following]~~ Disposal of certain solid wastes by a practice common to the industry shall be deemed to have a permit-by-rule ~~if [provided]~~ the operation is not in violation of the applicable environmental performance standards of 401 KAR 47:030, does not present a threat of imminent hazard to human health or substantial environmental impact, and if the following applicable conditions are met:

- (1) Sawdust piles if:
  - (a) The pile is on the property of the generator; and
  - (b) The pile does not cause nonpoint pollution of surface water above the water quality criteria ~~[standard]~~ specified in 401 KAR 5:031.
- (2) Disposal of asphalt residue.
- (3) Oil production brine pits and gas and oil drilling mud pits, if the operator:
  - (a) Has a KPDES or NPDES permit; and
  - (b) Complies with the conditions of the KPDES or NPDES permit.
- (4) One (1) time disposal of waste construction material if:
  - (a) Disposal occurs at the point of generation;
  - (b) Disposal occurs only during the period of construction;
  - (c) The wastes do not include any materials that contain leachable hazardous constituents or asbestos; and
  - (d) The wastes do not include packaging or putrescible wastes.
- (5) Disposal of demolition waste on the property where demolition occurs during the period of demolition except for materials containing asbestos.
- (6) Disposal of land clearing debris on the property where clearing occurred.
- (7) ~~[Disposal of less than 100 tires, shredded tires in a single pile of less than one-fourth (1/4) acre, or tires actively used in agricultural operations.]~~
- (8) Waste piles.

- (8) ~~[(9)]~~ Automobile and truck recyclers and salvage yards.
- (9) ~~[(10)]~~ Surface impoundments with a KPDES permit.
- (10) ~~[(11)]~~ Beneficial reuse of solid waste.

Section 2. Emergency Permits. (1) ~~If [Notwithstanding any other provision of this chapter, in the event]~~ the cabinet finds an imminent and substantial endangerment to human health or the environment, the cabinet may issue an emergency permit to allow temporary storage or disposal of solid waste for a nonpermitted facility, thus granting the nonpermitted facility an effective temporary solid waste site or facility permit. However, an emergency permit shall only be issued when the circumstances preclude the processing of a permit of appropriate classification, and the permitted site would not create an endangerment to human health or the environment. The permit [Such permits] may be for either temporary or permanent disposal.

(2) An emergency permit:

- (a) Shall be oral or written. If oral, it shall be followed in five (5) days by a written emergency permit request;
- (b) Shall not exceed ninety (90) days in duration;
- (c) Shall clearly specify the solid wastes to be received, and the manner and location of treatment, storage, or disposal;
- (d) May be unilaterally terminated by the cabinet at any time if the cabinet determines that termination is appropriate to protect human health or the environment;
- (e) Shall incorporate to the extent possible and not inconsistent with the emergency situation, all applicable requirements of this chapter and 401 KAR Chapter 48;
- (f) Shall specify that all remaining solid waste and residues are removed at the end of the term of the emergency permit to a properly permitted solid waste site or facility in order to be exempted from the technical and financial requirements of 401 KAR Chapter 48; and
- (g) Shall specify that failure to comply with the conditions of the emergency permit shall be grounds for the cabinet to recover the cost of proper closure.

Section 3. Research, Development and Demonstration Permits.

(1) The cabinet may issue a research, development and demonstration permit for any solid waste treatment or disposal facility which proposes to utilize an innovative and experimental solid waste technology or process for which permit standards for such experimental activity have not been promulgated under 401 KAR Chapter 48. Any permit shall include such terms and conditions as shall assure protection of human health and the environment. In issuing research, development and demonstration permits the cabinet shall:

- (a) Provide for the construction of such facilities as necessary, and for operation of the facility for not longer than one (1) year unless renewed as provided in subsection (4) of this section;
  - (b) Provide for the receipt, storage and disposal by the facility of only those types and quantities of solid waste that the cabinet deems necessary for purposes of determining the efficiency and performance capabilities of the technology or process and the effects of such technology or process on human health and the environment; and
  - (c) Include such requirements as the cabinet deems necessary to protect human health and the environment including, but not limited to: monitoring, operation, financial responsibility, closure, remedial action, testing, and reporting.
- (2) For the purpose of expediting review and issuance of permits under this section, the cabinet may, consistent with the protection of human health and the environment, modify or waive permit application and permit issuance requirements in 401 KAR Chapter 47 except that there may be no modification or waiver of provisions in KRS Chapter 224 regarding financial responsibility (including insurance) or of procedures regarding public notification.

(3) The cabinet may order an immediate termination of all operations at the facility at any time it is determined that termination is necessary to protect human health and the environment.

(4) Any permit issued under this section shall not be renewed

more than three (3) times. Each such renewal shall be for a period of not more than one (1) year.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: June 12, 1997

FILED WITH LRC: June 13, 1997 at 10 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Wednesday, July 30, 1997, at 2 p.m. eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by July 23, 1997. If a notification of intent to attend the hearing has not been received by that date, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by July 23, 1997 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the close of the public hearing on July 30, 1997. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Microsoft Word on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Microsoft Word or 3.5 inch diskettes not be available. The Natural Resources and Environmental Protection cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodations for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by July 23, 1997.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, phone: (502) 564-2225, ext. 221, fax: (502) 564-4049.

#### REGULATORY IMPACT ANALYSIS

Contact Person: James Hale

1. Type and number of entities affected: This administrative regulation effects all permit-by-rule; emergency permit; and research, development, and demonstration permit sites or facilities engaging in the management, processing, or disposal of solid waste. The amendments proposed to this administrative regulation are designed to achieve consistency with KRS 224.50-820 to 224.50-844, which already supersede the provisions of this administrative regulation. These amendments would not affect any entities currently subject to regulation by this administrative regulation.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were

received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The cabinet will experience no additional costs or savings as a result of this amendment.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: There will be no additional factors affecting costs.

b. Reporting and paperwork requirements: There will be no extra paperwork requirements as a result of these amendments.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenue as a result of these amendments.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: No costs will be imposed as a result of these amendments.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: The provisions of KRS 224.50-820 to 224.50-844 supersede the provisions being removed from this administrative regulation. There were no alternatives.

8. Assessment of expected benefits of the administrative regulation: The expected benefit is consistency between statutory and regulatory provisions.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: There will be no effects on public health and environmental welfare as a result of these amendments.

b. State whether a detrimental effect on the environment and public health would result if not implemented: There will be no detrimental effect on the environment and public health resulting from these amendments.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? The regulations contained in 401 KAR Chapters 47 and 48 use multiple tiering systems. Permit-by-rule in 401 KAR 47:150, and registered permit-by-rule in 401 KAR 47:110 give certain practices and management activities a method to avoid full permits. Emergency permits and research, development and demonstration permits in 401 KAR 47:150 provide permitting mechanisms for certain situations. The three types of solid waste landfills (contained, residual, and construction/demolition debris) and the three classes of landfarming provide for a tiering mechanism based on the type and quantity of the waste received.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: Subtitle D of the Resource Conservation and Recovery Act, as amended, is the federal statute constituting the federal mandate. 40 CFR 257 also supplies criteria for classification of solid waste

disposal facilities and practices. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.50 requires the cabinet to adopt administrative regulations and implement a waste tire removal and control program.

2. State compliance standards: There is no federal mandate for this administrative regulation. This administrative regulation sets forth the requirements for permits-by-rule; emergency permits; and research, development, and demonstration permits for solid waste facilities.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. The amendments to this administrative regulation will affect any state, county, or local office of government that accumulates or processes waste tires.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. This administrative regulation sets forth the requirements for permits-by-rule; emergency permits; and research, development, and demonstration permits for solid waste facilities.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): The amendments to this administrative regulation will not affect local government revenues.

Expenditures (+/-): The amendments to this administrative regulation will not affect local government expenditures.

Other Explanation: None

#### JUSTICE CABINET Division of Charitable Gaming (Amendment)

#### 500 KAR 11:001. Definitions.

RELATES TO: KRS 238.500 to 238.995

STATUTORY AUTHORITY: KRS 238.515(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 238 authorizes the Division of Charitable Gaming to adopt administrative regulations to carry out the provisions of the chapter. This administrative regulation establishes definitions of terms used throughout 500 KAR Chapter 11.

Section 1. Definitions. The following definitions describe terms used in administrative regulations found in 500 KAR Chapter 11. Terms not defined below shall have the meanings given to them by

KRS 238.505 or if not so defined, the meanings attributed by common use.

(1) "Bet block" means an area which indicates the dollar amount of the wager.

(2) "Card" means a card or paper containing five (5) rows of five (5) squares with twenty-four (24) preprinted numbers and a free center space, and the letters, "B", "I", "N", "G", "O" printed in order over the five (5) columns.

(3) "Cash" means currency, coinage or a negotiable instrument.

(4) "Conditioning" means a restatement of how many numbers or combination of numbers are being selected by the players, the way in which they are wagered, and the corresponding dollar amounts wagered.

(5) "Covered" means daubed or smeared with indelible ink.

(6) "Deal" means each separate game or series of charity game tickets with the same serial number.

(7) "Designator" means an item used in the number selection process, such as a ping pong ball, upon which bingo letters and numbers are imprinted.

(8) "Disposable paper bingo card" means a nonreusable, paper bingo card bearing preprinted numbers and assembled in multiple card sheet, single sheet, pad or packet form.

(9) "Draw ticket" means a ticket upon which the numbers randomly selected are marked on a blank ticket as the numbers are selected.

(10) "EPROM" means Erasable Programmable ROM.

(11) "Exception log" means a record documenting any prize payouts which have not been authorized by the computer.

(12) "Face" means a card or paper containing five (5) rows of five (5) squares with twenty-four (24) preprinted numbers and a free center space, and the letters "B", "I", "N", "G", "O" printed in order over the five (5) columns.

(13) "Festival bingo" means bingo conducted at a charity fundraising event and for which total cash and the fair market value of prizes awarded do not exceed \$5,000.

(14) "Flare" means a piece of paper or cardboard or similar material which bears printed information relating to the number of prizes to be awarded and the specific prize amounts in a particular deal of charity game tickets.

(15) ~~((44))~~ "Inside ticket" means a blank Keno ticket constructed with eighty (80) blocks containing the printed numbers one (1)-eighty (80) and containing a bet block.

(16) ~~((45))~~ "Keno" means a numbers game in which participants choose from one (1) to ten (10) numbers from a pool of eighty (80) numbers, and the winner(s) and their prize(s) are determined on the basis of correctly matching their numbers to the twenty (20) numbers generated for each game.

(17) ~~((46))~~ "Keno equipment" means electronic selection devices, random number generators and computerized Keno systems/integrated systems of computer hardware and software that generate player tickets, record game outcomes, verify winning tickets, produce management reports and perform other internal audit controls of the Keno operation.

(18) ~~((47))~~ "Keno manager" means the person in charge of the operation of the Keno game.

(19) ~~((48))~~ "Multirace ticket" means a single ticket which allows a player to make the same wager on consecutive games.

(20) ~~((49))~~ "Outside ticket" means a computer generated ticket given to the player which reflects certain game and wagering information.

(21) ~~((20))~~ "Perm number" means the number generally printed in the center space of a bingo card that identifies the unique pattern of numbers printed on that card.

(22) ~~((24))~~ "PROM" means programmable ROM.

(23) ~~((22))~~ "Quick pick" means a number selection made for the player by a computer.

(24) ~~((23))~~ "RAM" means random access memory and is the

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electronic memory that the computer uses to store information.

(25) [(24)] "Random number generator" means a hardware, software or combination hardware and software device for generating number values that exhibit characteristics of randomness.

(26) [(25)] "Regrade" means to manually recalculate the prize payout of a winning ticket according to the printed pay schedule.

(27) [(26)] "ROM" means read only memory which is the electronic component used for storage of nonvolatile information in Keno equipment and provides instructions the computer needs to begin its operations each time the computer is turned on. The term includes PROM and EPROM.

(28) [(27)] "Selection device" means a device that may be operated manually or automatically and is used to randomly select bingo numbers.

(29) [(28)] "Serial number" means a unique number printed by the manufacturer on each card in a set and which is unique to that set.

(30) [(29)] "Series number" means the number of unique card faces contained in a set.

(31) [(30)] "Set" means a specific group of cards from the same product line which are the same color, border pattern and imprinted with the same serial number. A set of cards may include more than one (1) series of cards or faces.

(32) [(31)] "Transaction log" is a record either retained in the computer's memory or printed out by the computer which contains the same information printed on each outside ticket.

(33) [(32)] "Verification book" means a book compiled by the manufacturer of bingo cards that lists the unique pattern of numbers on each card by perm number and is used to verify the authenticity of a winning card.

(34) [(33)] "Way ticket" means a single ticket which allows a player to wager on the combination of groups of numbers in various ways designated by the player.

(35) "Week" means a seven (7) day period beginning on Sunday and ending Saturday.

(36) [(34)] "Year" means calendar year except as used in KRS 238.555(7) and 500 KAR 11:080, Section 2, when "year" means the licensee's license year.

SARAH M. JACKSON, Director

APPROVED BY AGENCY: June 10, 1997

FILED WITH LRC: June 10, 1997 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Wednesday, July 23, 1997, at 9 a.m. at the Division of Charitable Gaming Conference Room, Suite 100, Bush Building, 403 Wapping Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by July 16, 1997, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation, if requested, at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost therefore to be borne by the requesting party. If you do not wish to attend the public hearing, you may submit comments on this administrative regulation by July 16, 1997. Send written notification to attend the public hearing or comments on this administrative regulation to: Sarah M. Jackson, Director, Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, First Floor, Frankfort, Kentucky 40601-2639, PH: (502) 564-5528, FAX: (502) 564-6625.

### REGULATORY IMPACT ANALYSIS

Contact Person: Sarah M. Jackson, Director

(1) Type and number of entities affected: All licensed manufactur-

ers (currently 16), licensed distributors (currently 56), and licensed charitable organizations (currently 771).

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Charity Gaming Regulation Account - KRS 238.570(2).

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: N/A

(b) State whether a detrimental effect on environment and public health would result if not implemented: N/A

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is inapplicable.

### JUSTICE CABINET Division of Charitable Gaming (Amendment)

#### 500 KAR 11:025. Quarterly reports.

RELATES TO: KRS 238.550, 238.570(1)

STATUTORY AUTHORITY: KRS 238.515(4), (9), 238.550, 238.570(1)

NECESSITY, FUNCTION, AND CONFORMITY: All licensed charitable organizations are required to remit one-half (1/2) of one (1) percent of gross receipts derived from charitable gaming. Quarterly reports are required of all licensed charitable organizations. This administrative regulation establishes the method and time of filing the quarterly reports and remitting payment of the quarterly fees due.

Section 1. Quarterly Reporting Period Defined. A quarterly report

shall be filed by each licensed charitable organization no later than thirty (30) days following the close of each calendar year quarter.

Section 2. Quarterly Reports. Quarterly reports shall be submitted on forms prescribed by the division and shall be signed by an authorized officer of the licensed charitable organization and, if prepared by an individual other than an authorized officer, by the preparer.

Section 3. Fees Due. The fees imposed by KRS 238.570(1) on gross gaming receipts of licensed charitable organizations shall be remitted by check ~~or money order~~ made payable to "Kentucky State Treasurer" at the time the quarterly reports are due.

Section 4. Late Fine. (1) If the quarterly fee imposed by KRS 238.570(1) is not remitted when due, a fine of twenty-five (25) dollars per day, not to exceed \$250 dollars per quarter, shall be imposed on the licensed charitable organization until the quarterly fee has been received by the division. The quarterly fee shall be considered remitted when due if it has been mailed to the division by first class mail, postage prepaid, to the correct address and postmarked by the due date.

(2) The fine imposed in subsection (1) of this section shall be paid within ten (10) days of receipt of an invoice from the division and shall be by check ~~or money order~~ made payable to "Kentucky State Treasurer".

Section 5. Reporting Expenses. All expenses reported by a licensee on Form CG-QR shall be reported for the period in which payment is made regardless of when the goods or services are used.

Section 6. Incorporation by Reference. (1) The following reporting forms are incorporated by reference:

- (a) Form CG-QR, "Quarterly Activity Report (6/96)".
- (b) Attachment A, "Charitable Gaming Accounting Summary (6/96)".
- (c) Attachment B, "Report of All Prize Winners of \$600 or More (6/96)".
- (d) Attachment C, "Special License Activity Report (6/96)".
- (e) Attachment D, "Summary of Gaming Activity (6/96)".
- (f) Attachment E, "Report of Charitable Contributions Made by Licensee (6/96)".

(2) These forms may be inspected, obtained or copied at the Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, Suite 100, Frankfort, Kentucky 40601-2639, 8 a.m. to 4:30 p.m., Monday through Friday.

SARAH M. JACKSON, Director

APPROVED BY AGENCY: June 10, 1997

FILED WITH LRC: June 10, 1997 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Wednesday, July 23, 1997, at 9 a.m. at the Division of Charitable Gaming Conference Room, Suite 100, Bush Building, 403 Wapping Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by July 16, 1997, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation, if requested, at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost therefore to be borne by the requesting party. If you do not wish to attend the public hearing, you may submit comments on this administrative regulation by July 16, 1997. Send written notification to attend the

public hearing or comments on this administrative regulation to: Sarah M. Jackson, Director, Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, First Floor, Frankfort, Kentucky 40601-2639, PH: (502) 564-5528, FAX: (502) 564-6625.

## REGULATORY IMPACT ANALYSIS

Contact Person: Sarah M. Jackson, Director

(1) Type and number of entities affected: All licensed charitable organizations (currently about 771 licensees).

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Amendment to regulation should reduce the number of late fines imposed, thereby decreasing cost of compliance.

2. Second and subsequent years: See 2(c)(1) above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Division of Charitable Gaming will receive lower late fines as a result of the amendment, though reduction of staff time should even this factor out.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There will be a reduction of staff time and needed correspondence as a result of the amendment to the regulation.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Charitable Gaming Regulatory Account - KRS 238.570(2).

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: N/A

(b) State whether a detrimental effect on environment and public health would result if not implemented: N/A

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is inapplicable.

JUSTICE CABINET  
Division of Charitable Gaming  
(Amendment)

500 KAR 11:080. Charity fundraising event.

RELATES TO: KRS 238.505(8)

STATUTORY AUTHORITY: KRS 238.505(8), 238.515(2), (9), 238.535

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.505(8) authorizes a charity fundraising event, such as a fair, carnival, bazaar or festival, that is of short, definite and limited duration and requires licensure by the Division of Charitable Gaming. This administrative regulation establishes licensure requirements, prize amounts, duration and frequency.

Section 1. A special charitable fundraising event license shall be issued to a licensed charitable organization for the charity fundraising event described in KRS 238.505(8) if:

- (1) The licensed charitable organization submits the satisfactorily completed CG-Schedule A;
- (2) The total cash or fair market value of all prizes to be awarded at the event on games of chance does not exceed \$5,000, exclusive of charity game ticket prizes and bingo prizes awarded at a regularly scheduled bingo session, for which a change of location was approved by the division director pursuant to KRS 238.540(1); and
- (3) The event does not last longer than five (5) continuous days.

Section 2. No more than two (2) special charity fundraising event licenses will be issued to any one (1) licensed charitable organization in one (1) year.

Section 3. There shall be no separate fee charged by the Division of Charitable Gaming for the issuance of a special charity fundraising event license.

Section 4. If special limited games are conducted at a charity fundraising event, the licensed charitable organization shall also be licensed to hold the special limited games in accordance with KRS 238.545(4).

Section 5. If festival bingo is held at a charity fundraising event licensed under Section 1(2) of this administrative regulation, the provisions of KRS 238.545(1) limiting the frequency and duration of bingo are inapplicable.

Section 6. A charity fundraising event licensed under Section 1 of this administrative regulation may be held at a location other than the location specified on the charitable organization's license to conduct charitable gaming issued under KRS 238.535.

Section 7. A licensed charitable organization shall not be required to obtain a special charity fundraising event license under Section 1 of this administrative regulation in order to conduct a noncash prize wheel where:

- (1) The winner is determined by the spinning of a wheel;
- (2) The cost of each chance to win does not exceed two (2) dollars; and
- (3) The fair market value of any one (1) noncash prize awarded the winner does not exceed fifty (50) dollars.

Section 8. Incorporation by Reference. (1) "CG-Schedule A, Application for Special Limited Charitable Gaming License/Special Charity Fundraising Event License (for use with Form CG-1) (6/96)", is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush

Building, Suite 100, Frankfort, Kentucky 40601-2639, Monday through Friday, 8 a.m. to 4:30 p.m.

SARAH M. JACKSON, Director

APPROVED BY AGENCY: June 10, 1997

FILED WITH LRC: June 10, 1997 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Wednesday, July 23, 1997, at 9 a.m. at the Division of Charitable Gaming Conference Room, Suite 100, Bush Building, 403 Wapping Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by July 16, 1997, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation, if requested, at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost therefore to be borne by the requesting party. If you do not wish to attend the public hearing, you may submit comments on this administrative regulation by July 16, 1997. Send written notification to attend the public hearing or comments on this administrative regulation to: Sarah M. Jackson, Director, Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, First Floor, Frankfort, Kentucky 40601-2639, PH: (502) 564-5528, FAX: (502) 564-6625.

REGULATORY IMPACT ANALYSIS

Contact Person: Sarah M. Jackson, Director

(1) Type and number of entities affected: All licensed charitable organizations conducting charity fundraising events (estimate as many as 250 per year).

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: A decrease in paperwork and costs will be recognized because organizations will not need to apply for a special license for certain gaming activities.

2. Second and subsequent years: (See (2)(c)1 above.)

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Reduction of staff time and paperwork as a result of processing fewer special licenses.

2. Continuing costs or savings: (See (3)(a)1 above.)

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Reduction of paperwork as a result of processing fewer special licenses.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Charity Gaming Regulatory Account - KRS 238.570(2).

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: N/A

(b) State whether a detrimental effect on environment and public health would result if not implemented: N/A

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is inapplicable.

# JUSTICE CABINET

## Division of Charitable Gaming (Amendment)

### 500 KAR 11:090. Special limited charitable games.

RELATES TO: KRS 238.505(17)

STATUTORY AUTHORITY: KRS 238.505(17), 238.515(2), (9), 238.535(1)

NECESSITY, FUNCTION, AND CONFORMITY: The Division of Charitable Gaming is authorized to approve games to be included among those classified as "special limited charitable games", to establish circumstances under which such games will be conducted, and to establish reporting requirements.

Section 1. In addition to those special limited charitable games described in KRS 238.505(17), all games of chance shall be considered special limited charitable games requiring licensure by the division of charitable gaming where the winner is selected on the spinning of a wheel and:

(1) The cost of each chance to win exceeds two (2) dollars; or

(2) The fair market value of any one (1) noncash prize awarded the winner exceeds \$100.

Section 2. The division may not issue more than one (1) special limited charitable gaming license per week and not more than seven (7) such licenses per year for any one (1) location.

SARAH M. JACKSON, Director

APPROVED BY AGENCY: June 10, 1997

FILED WITH LRC: June 10, 1997 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Wednesday, July 23, 1997, at 9 a.m. at the Division of Charitable Gaming Conference Room, Suite 100, Bush Building, 403 Wapping Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by July 16, 1997, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation, if requested, at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost therefore to be borne by the requesting party. If you do not wish to attend the public hearing, you may submit comments on this administrative regulation by July 16, 1997. Send written notification to attend the

public hearing or comments on this administrative regulation to: Sarah M. Jackson, Director, Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, First Floor, Frankfort, Kentucky 40601-2639, PH: (502) 564-5528, FAX: (502) 564-6625.

## REGULATORY IMPACT ANALYSIS

Contact Person: Sarah M. Jackson, Director

(1) Type and number of entities affected: All licensed charitable organizations conducting special limited games (estimate as many as 375 per year).

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No costs or savings.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No costs or savings.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Costs of reviewing CG-Schedule A applications and tracking nonlicensed locations resulting in minimal increased staff time.

2. Continuing costs or savings: Costs of reviewing CG-Schedule A applications and tracking nonlicensed locations resulting in minimal increased staff time.

3. Additional factors increasing or decreasing costs: None known.

(b) Reporting and paperwork requirements: Paperwork will increase as Licensing Branch must now track unlicensed locations.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Charity Gaming Regulatory Account - KRS 238.570(2).

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative prize amounts and cost levels of participation were considered, but it was believed that the regulation arrived at fairly and adequately addresses the organizations conducting noncash prize wheel games.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: N/A

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. All charitable organizations will be treated the same.

# ADMINISTRATIVE REGISTER - 156

## JUSTICE CABINET Department of Corrections Division of Adult Institutions (Amendment)

### 501 KAR 6:050. Luther Lockett Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association.

Section 1. Incorporation by Reference. (1)(a) Luther Lockett Correctional Complex policies and procedures, June 12, 1997 [~~September 12, 1996~~], are incorporated by reference.

(b) It may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, State Office Building, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m.

(2) Luther Lockett Correctional Complex policies and procedures include:

LLCC 01-12-01 Duty Officer Responsibilities [~~(Amended 9/12/96)~~]  
LLCC 01-13-01 Smoking Facility Policy [~~(Amended 9/12/96)~~]  
LLCC 02-01-02 Fiscal Management: Accounting Procedures  
LLCC 02-01-03 Fiscal Management: Agency Funds  
LLCC 02-01-04 Fiscal Management: Insurance Policy [~~(Amended 9/12/96)~~]  
LLCC 02-03-01 Fiscal Management: Audits  
LLCC 08-01-01 Offender Records [~~(Amended 9/12/96)~~]  
LLCC 08-04-01 Storage of Void Records [~~(Amended 9/12/96)~~]  
LLCC 08-05-01 Psychological and Psychiatric Reports [~~(Amended 9/12/96)~~]  
LLCC 11-09-01 Rules and Regulations of the Unit (Amended 6/12/97)  
LLCC 11-13-01 Inmate Dress and Use of Access Areas  
~~LLCC 11-18-02 Use of Monitor Telephone (Deleted 6/12/97)~~  
LLCC 11-19-01 Unit Shakedowns and [f] Control of Excess Property (Amended 6/12/97)  
LLCC 11-20-01 Mental Health Services (Amended 6/12/97) [~~Program Services for "Special Needs"/Mentally Ill Inmates~~]  
LLCC 12-01-01 Special Management Inmates (Amended 6/12/97)  
LLCC 13-01-01 Dining Room Guidelines (Amended 6/12/97)  
LLCC 13-04-01 Food Service: Meals (Amended 6/12/97)  
LLCC 13-04-02 Food Service: Menu, Nutrition and Special Diets (Amended 6/12/97)  
LLCC 13-05-02 Medical Screening of Food Handlers (Amended 6/12/97)  
LLCC 13-06-01 Food Service: Inspections and Sanitation (Amended 6/12/97)  
LLCC 13-07-01 Food Service: Purchasing and Farm Products  
LLCC 13-08-01 OJT Food Service Training Placement  
LLCC 14-01-01 Sanitation, Living Condition Standards, and Clothing Issue (Amended 6/12/97)  
LLCC 14-05-01 Institutional Inspections [~~(Amended 9/12/96)~~]  
LLCC 15-01-01 Health Maintenance Services; Sick Call and Pill Call  
LLCC 15-03-01 Pharmacy Procedure (Amended 6/12/97)  
LLCC 15-03-02 Pharmacy Personnel  
LLCC 15-03-03 Distribution, Procurement and Control (Amended

6/12/97)  
LLCC 15-03-04 Inmate Self Administration of Medication (Amended 6/12/97) [~~(Amended 9/12/96)~~]  
LLCC 15-03-05 Use of Psychotropic Medications (Amended 6/12/97)  
LLCC 15-05-02 Licensure and Training Standards (Amended 6/12/97)  
LLCC 15-06-02 Specialized Health Services (Amended 6/12/97)  
LLCC 15-06-03 Emergency Medical and [f] Dental Care Services (Amended 6/12/97)  
LLCC 15-06-04 First Aid/CPR Training Program  
LLCC 15-06-05 Suicide Prevention and Intervention Program (Amended 6/12/97)  
LLCC 15-07-01 Health Records (Amended 6/12/97)  
LLCC 15-08-01 Special Diets  
LLCC 15-10-01 Inmate Medical Screening and Health Evaluations  
LLCC 15-14-01 Informed Consent  
LLCC 15-15-01 Medical Restraints  
LLCC 15-16-01 Health Education/Special Health Programs  
LLCC 15-17-01 Serious and Infectious Diseases  
LLCC 16-01-01 Inmate Rights and Responsibilities (Amended 6/12/97)  
LLCC 16-03-01 Inmate Legal Services (Amended 6/12/97)  
LLCC 18-01-01 Inmate Correspondence (Amended 6/12/97)  
LLCC 18-01-02 Inmate Privileged or Legal Mail Policy  
LLCC 18-01-03 Inmate Packages  
LLCC 18-02-01 Inmate Visiting  
LLCC 18-02-03 Modification of Visitation Privileges  
LLCC 18-02-04 Meritorious Visits  
LLCC 18-03-01 Entry and Identification of Visitors for Inmate Visitation  
LLCC 18-03-03 Inmate Visiting Disciplinary Segregation Administrative Segregation  
LLCC 18-03-04 Parole Hearings  
LLCC 20-01-01 Personal Property Control (Amended 6/12/97)  
LLCC 20-04-01 Inmate Canteen Committee  
LLCC 20-04-02 Inmate Canteen  
LLCC 20-04-03 Canteen Purchases  
LLCC 20-05-01 Inmate Control of Personal Funds  
LLCC 20-05-02 Storage and Disposition of Monies Received on Weekends, Holidays, and Between 4 p.m. and 8 a.m. Weekdays  
LLCC 20-05-03 Theft of Inmate Personal Property (Amended 6/12/97)  
LLCC 20-06-01 Procedure for Sending Appliances to Outside Dealers for Repair (Amended 6/12/97)  
LLCC 22-01-01 On-the-job Training Assignment (Amended 6/12/97)  
LLCC 23-01-01 Educational Programs (Amended 6/12/97) [~~Academic School~~]  
LLCC 26-01-01 Religious Services (Amended 6/12/97)  
LLCC 26-01-02 Prayer (Amended 6/12/97)

DOUG SAPP, Commissioner

APPROVED BY AGENCY: June 3, 1997

FILED WITH LRC: June 12, 1997 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1997, at 9 a.m., in the State Office Building Auditorium. Individuals interested in being heard at this hearing shall notify this agency in writing by July 14, 1997, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send

TRANSPORTATION CABINET  
Department of Highways  
Permits Branch  
(Amendment)

written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack Damron or Tamela Biggs, Staff Attorneys, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, Telephone (502) 564-2024, Facsimile (502) 564-6494.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Tamela Biggs

(1) Type and number of entities affected: 279 employees of the correctional institutions, 1,090 inmates, and all visitors to state correctional institutions.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1996-1998 biennium.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed administrative regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

603 KAR 3:080. Advertising devices.

RELATES TO: KRS 177.830 to 177.890, 23 USC 131, 23 CFR Part 750

STATUTORY AUTHORITY: KRS 177.860, 23 USC 131, 23 CFR Part 750

NECESSITY, FUNCTION, AND CONFORMITY: KRS 177.860 authorizes the Department of Highways to establish reasonable standards for advertising devices on or visible from interstate, parkway and federal-aid primary highways. This administrative regulation is the means used by the Department of Highways to establish those standards. In addition KRS 177.867 requires the Department of Highways to pay just compensation for the removal of legally-erected advertising devices which are not in compliance with current state law or administrative regulation. This administrative regulation sets forth standards for determining when the Department of Highways shall pay just compensation. There are two (2) federal laws which govern the control of outdoor advertising devices. The "Highway Beautification Act", 23 USC Part 131, as amended, is a federal mandate. However, states which comply with the earlier enacted "Bonus Act" must establish more stringent controls over the placement of outdoor advertising devices than the general federal mandate. Kentucky's authorizing statutes, originally enacted in 1960, require the control of outdoor advertising devices to be consistent with the more stringent "Bonus Act" and Kentucky has entered into an agreement with the Federal Highway Administration setting forth the specific standards for the control of outdoor advertising devices. This administrative regulation is consistent with the "Bonus Act" and our bonus agreement with the Federal Highway Administration. The inconsistency resulted from a recent Kentucky Supreme Court decision regarding zoning requirements. The change in the administrative regulation is consistent with the Supreme Court's decision. A recent change in 23 USC Part 131 mandates that outdoor advertising devices be controlled on all road segments on the National Highway System. The few segments of that system on which outdoor advertising devices were not previously controlled have been included in this administrative regulation to comply with the federal mandate.

Section 1. Definitions. (1) ["Advertising device" or "device" means as defined in KRS 177.830(5).

(2) "Abandoned" or "discontinued" means that for a period of one (1) year or more that the device:

(a) Has not displayed any advertising matter;

(b) Has displayed obsolete advertising matter; or

(c) Has needed substantial repairs.

A notice that the device is for sale, rent, or lease shall not be considered advertising matter.

(2) "Advertising device" or "device" means as defined in KRS 177.830(5).

(3) "Activity boundary line" means the delineation on a property of those regularly used buildings, parking lots, storage and process areas which are an integral part of and essential [contiguous] to the primary business activity which takes place on the property. In an industrial park, the service road shall be considered within the activity boundary line for the industrial park as a separate entity.

(4) "Allowed" means legal to exist without a permit from the Department of Highways.

(5) "Billboard" or "off-premise advertising device" means a device that contains a message relating to an activity or product that is foreign to the site on which the device and message are located or an advertising device erected by a company or individual for the purpose of selling advertising messages for profit.

(6) "Centerline of the highway" means a line equidistant from the edges of the median separating the main traveled ways of a divided highway, or the centerline of the main traveled way of a nondivided highway.

(7) "Commercial or industrial activities" means as defined in KRS 177.830(9).

(8) "Commercial or industrial enterprise" means any activity carried on for financial gain except that it shall not include:

- (a) Leasing of property for residential purposes;
- (b) Agricultural activity or animal husbandry; or
- (c) Operation or maintenance of an advertising device.

(9) "Commercially or industrially developed area" means, as it is applied to interstate and parkway highways only:

(a) Any area within 100 feet (thirty and five-tenths (30.5) meters) of, and including any area where there are located within the protected area at least ten (10) separate commercial or industrial enterprises, not one of the structures from which one (1) of the enterprises is being conducted is located at a distance greater than 1620 feet (493.8 meters) from any other structure from which one (1) of the other enterprises is being conducted; and

(b)1. The land use for the area as of September 21, 1959 was clearly established by state law as industrial or commercial; or

2. The land use for the area was within an incorporated municipality as the boundaries existed on September 21, 1959 and is currently zoned for commercial or industrial use at the time of the application for an advertising device permit; and

(c) Not less than ten (10) of the enterprises referred to in paragraph (a) of this subsection are at the time of the permit application and were on March 10, 1960, located in an area governed by state or local zoning laws and in compliance with the state and local zoning laws and administrative regulations. If there was no local zoning ordinance in effect on March 10, 1960 or if there is no local zoning ordinance in effect at the time of the permit application, the provisions of paragraph (a) of this subsection shall not be applicable.

(10) [(9)] "Commercial or industrial zone" means as defined in KRS 177.830(7).

(11) [(10)] "Comprehensively zoned" means, as it is applied to FAP highways only, that each parcel of land under the jurisdiction of the zoning authority has been placed in some zoning classification.

(12) [(11)] "Department" means the Department of Highways within the Kentucky Transportation Cabinet.

(13) [(12)] "Destroyed" means that the advertising device has sustained damage by any means in excess of fifty (50) percent of the entire advertising device which includes supports, poles, guys, struts, panels, facing, and bracing. The damage is such that to be structurally and visually acceptable, one (1) or more of the following remedies is essential:

- (a) Adding guys or struts;
- (b) Adding new supports or poles by splicing or attaching to existing supports;
- (c) Adding separate new auxiliary supports or poles;
- (d) Adding new or replacement peripheral or integral structural bracing or framing; or
- (e) Adding new or replacement panels or facings.

(14) "Electronic sign" means an on-premise advertising device whose message may be changed by electrical or electronic process, and includes the device known as the electronically changeable message center for advertising on-premise activities.

(15) [(13)] "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw or in any way bring into being or establish, but it shall not include any of the foregoing activities when performed as an incident to the change of advertising message or customary maintenance or repair of an advertising device.

(16) [(14)] "Federal-aid primary highway" or "FAP highway" means as defined in KRS 177.830(3) and 23 USC 131. [The FAP highways are listed in Section 11 of this administrative regulation.]

(17) [(15)] "Identifiable" means capable of being related to a

particular product, service, business or other activity even though there is no written message to aid in establishing the relationship.

(18) [(16)] "Interstate highway" means as defined in KRS 177.830 (2).

(19) [(17)] "Legible" means capable of being read without visual aid by a person of normal visual acuity, or capable of conveying an advertising message to a person of normal visual acuity.

(20) [(18)] "Main traveled way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, each direction has its own main traveled way. It does not include such facilities as frontage roads, turning roadways, access ramps, or parking areas.

(21) "National highway system" or "NHS" means the Kentucky highways defined in 23 USC 103 excluding the highways which are part of the interstate, parkway, or FAP system of highways.

(22) [(19)] "Nonbillboard off-premise advertising device" means, as it is applicable to FAP and NHS highways only, an advertising device not located on the property which it is advertising and limited to advertising for a city, church, or civic club which includes any nationally, regionally or locally known religious or nonprofit organization.

(23) [(20)] "Nonconforming advertising device" means an off-premise advertising device which was lawfully erected but does not comply with the provisions of state law or administrative regulation passed at a later date or which later fails to comply with state law or administrative regulation due to changed conditions similar to the following:

- (a) Zoning change [changes];
- (b) Highway relocation;
- (c) Highway reclassification; or
- (d) Change in restriction [Changes in restrictions] on size, spacing or distance.

(24) [(21)] "Official sign" means a sign located within the highway right-of-way installed by or on behalf of the Department of Highways or other public agency having jurisdiction. Included [in these signs] are:

- (a) A sign [Signs] denoting the location of underground utilities;
- (b) A sign [Signs] required by a federal, state, or local government [governments] to delineate boundaries of a reservation, park, or district [reservations, parks or districts];
- (c) A street sign [signs] or traffic control sign [signs]; or
- (d) A sign [Signs] required by state law.

(25) [(22)] "On-premise advertising device" means an advertising device that contains a message relating to an [the primary] activity conducted or the sale of goods and services [a primary product] within the boundaries of the property on which the device is located. It does not mean a sign which generates rental income.

(26) [(23)] "Parkway" means any highway in Kentucky originally constructed as a toll road whether or not a toll for the use of the highway is currently being collected. As it relates to an advertising device, a parkway [advertising devices, parkways] shall be considered the equivalent of an interstate highway [highways].

(27) [(24)] "Permitted" means legal to exist only if a permit is issued from the Department of Highways.

(28) [(25)] "Primary business or activity" means that the sale of one product or a business activity which takes precedence over [any or all] other product sales or business activities.

(29) [(26)] "Protected area" means all areas within the boundaries of this Commonwealth which are adjacent to and within 660 feet (210.17 [200-64] meters) of the state-owned highway right-of-way of the interstate, parkway, NHS, and FAP highways and those areas which are outside urban area boundary lines and beyond 660 feet (210.17 [200-64] meters) from the right-of-way of an [a] interstate, parkway, NHS, or [and] FAP highway [highways] within the Commonwealth. If this highway [Where these highways] terminate at a state boundary which is not perpendicular or normal to the center line of the highway, "protected area" also means all of these areas inside the

boundaries of the Commonwealth which are adjacent to the edge of the right-of-way of an interstate highway in an adjoining state.

~~[(27)] "Public service information" means information allowed on an on-premise advertising device which may be illuminated by any flashing, moving or intermittent light or lights and which shall be limited to time, temperature, date, and current weather conditions.~~

~~[(28)] "Public service sign" means, as it is applicable to FAP highways only, a sign erected or located on a school bus shelter.~~

~~[(30)] [(29)] "Public service message" means a message pertaining to an activity or service which is performed for the benefit of the public and not for profit or gain of a particular person, firm or corporation or information such as time or temperature. [This definition shall apply to signs on school bus shelters on FAP highways only.]~~

~~[(31)] [(30)] "Routine change of message" means, as it relates to a nonconforming advertising device, the message change on an advertising device from one (1) advertised product or activity to another. This includes the lamination or preparation of the existing panels or facings at a plant or factory for the changing of messages when this is the normal operating procedure of a company.~~

~~[(32)] [(31)] "Routine maintenance" means, as it relates to a nonconforming advertising device:~~

~~(a) The maintenance of an advertising device which is limited to replacement of nuts and bolts, nailing, riveting or welding, cleaning and painting, or manipulating to level or plumb the device;~~

~~(b) The routine change of message; and~~

~~(c) The lamination or preparation of existing panels or facings at a location other than that of the advertising device.~~

~~(d) Routine maintenance shall not mean:~~

~~1. Adding guys or struts for the stabilization of the device or substantially changing the device; or~~

~~2. Replacement or repair of panels, poles, or facings or the addition of new panels, poles, or facings;~~

~~[(33)] [(32)] "Traveled way" means the portion of a roadway dedicated to the movement of vehicles, exclusive of shoulders.~~

~~[(34)] [(33)] "Turning roadway" means a connecting roadway for traffic, turning between two (2) intersecting legs of an interchange.~~

~~[(35)] [(34)] "Unzoned commercial or industrial area" means as defined in KRS 177.830(8).~~

~~[(36)] [(35)] "Urban area" means as defined in KRS 177.830(10).~~

~~[(37)] [(36)] "Visible" means capable of being seen, whether or not legible or identifiable without visual aid by a person of normal visual acuity and erected for the purpose of being seen from the traveled way.~~

Section 2. Signs on Highway Right-of-way. (1) Official signs allowed. An advertising device shall not be erected or maintained within or over the state-owned highway right-of-way except a directional or other official sign or signal ~~[signs or signals]~~ erected by or on behalf of the state or other public agency having jurisdiction.

(2) Types of official signs. The following official signs (with size limitations) may be allowed on state-owned highway right-of-way:

(a) Directional and other official ~~device [devices]~~ including a sign or device ~~[signs or devices]~~ placed by the Department of Highways;

(b) A sign or device ~~[Signs or devices]~~, limited in size to two (2) square feet ~~(0.186 [0.184] square meters)~~, denoting the location of underground utilities; or

(c) A sign ~~[Signs]~~, limited in size to 150 square feet (thirteen and nine-tenths ~~(13.9 [eight tenths (13.8)] square meters)~~, erected by a federal, state, or local government ~~[governments]~~ to delineate boundaries of a reservation, park, or district ~~[reservations, parks or districts]~~.

Section 3. General Conditions Relating to Advertising Devices. The requirements of this section shall apply to an advertising device ~~[devices]~~ on an interstate, parkway, NHS, and FAP highway ~~[highways]~~.

(1) Bonus agreement.

(a) An advertising device which is ~~[devices which are]~~ visible from an interstate highway, parkway, NHS, or FAP highway ~~[highways, parkways, or FAP highways]~~ shall be governed by the provisions of the agreement between the Kentucky Department of Highways and the Federal Highway Administration which was executed on December 23, 1971.

(b) This agreement is authorized by KRS 177.890 and 23 CFR Part 1.35 and required by 23 CFR Parts 190 and 750.

~~[(c)] The agreement is incorporated by reference in Section 13 of this administrative regulation.~~

(2) Advertising device allowed if not visible. An advertising device which is not visible from the main traveled way of the interstate, parkway, NHS, or FAP highway shall be allowed in protected areas.

(3) Visible from more than one (1) highway. If an advertising device is visible from more than one (1) interstate, parkway, NHS, or FAP highway on which control is exercised, the appropriate provisions of this administrative regulation or KRS 177.830 through 177.890 ~~[Chapter 177]~~ shall apply to each of these highways.

(4) Nonconforming advertising device may exist. An off-premise nonconforming, but otherwise legal, advertising device may continue to exist until just compensation has been paid to the owner, ~~if [only so long as]~~ it is:

(a) Not destroyed, abandoned or discontinued;

(b) Subjected to only routine maintenance;

(c) In conformance with local zoning or sign or building restrictions at the time of the erection; and

(d) In compliance with the provisions of Section 4(3) of this administrative regulation and KRS 177.863.

~~[(5)] Nonroutine maintenance on a nonconforming device. [(e)]~~ Performance of other than routine maintenance on a nonconforming, but otherwise legal, advertising device shall cause it to lose its legal status and to be classified as illegal.

~~[(6)] [(f)] Vandalized nonconforming device.~~

(a) The owner of a nonconforming, but otherwise legal, advertising device destroyed by vandalism or other criminal or tortious act may apply to the Department of Highways to reerect the advertising device in kind.

(b) The application for the reerection of the advertising device shall contain the following:

1. Plans and pictures showing the proposed new structure to be as exact a duplicate of the destroyed nonconforming advertising device as possible, including the same number of poles, type of stanchion, supports, material of poles or stanchion, and material of facing;

2. Sufficient proof that the destruction was the result of vandalism or other criminal or tortious act;

3. Ownership of the advertising device;

4. Dimensions of the destroyed advertising device;

5. Material used in erection of the destroyed advertising device;

6. Durability of the new device;

7. Stanchion type; and

8. Current lease from land owner.

(c) The Department of Highways shall not issue a notice to reconstruct until all of these conditions have been met.

(d) The owner of the vandalized nonconforming advertising device shall not reerect the advertising device until a notice to reconstruct has been issued by the Department of Highways.

~~[(7)] [(g)] Required measuring methods.~~

(a) To establish a protected area, the distance ~~[protected areas, distances]~~ from the edge of a state-owned highway right-of-way shall be measured horizontally along a line at the same elevation and at a right angle to the centerline of the highway for a distance of 660 feet ~~(210.17 [200.64] meters)~~ inside urban area boundaries and to the horizon outside urban area boundary lines.

(b) 1. A V-shaped or back-to-back type billboard advertising device ~~[devices]~~ shall not be more than fifteen (15) feet apart at the nearest

point between the two (2) sign facings and shall be connected by bracing or a maintenance walkway.

2. The angle formed by the two (2) sign facings shall not be greater than forty-five (45) degrees.

(c) The spacing between advertising devices shall be measured as described in KRS 177.863(2)(c).

~~(8) [(7)]~~ Criteria for off-premise advertising devices. The following criteria are applicable to any off-premise advertising device located in a protected area:

(a) An off-premise advertising device shall not exceed the maximum size stated in KRS 177.863(3)(a);

(b) ~~A~~ V-shaped, double-faced, or back-to-back billboard advertising device ~~[devices]~~ shall be considered as specified in KRS 177.863(2)(b);

(c) 1. A billboard advertising device may contain two (2) messages per direction of travel if the device does not exceed the maximum size stated in KRS 177.863(3)(a);

2. If a billboard advertising device contains two (2) messages on a single facing or panel, each one (1) shall occupy approximately fifty (50) percent of the device;

3. If a billboard advertising device contains two (2) messages in one (1) direction of travel, each on a separate panel or facing where one (1) panel or facing is placed above or beside the other but where the two (2) separate panels or facings are not touching;

(i) There may be a size differential in the panels if dictated by the terrain of the site of the billboard advertising device and if the differential is approved by the Transportation Cabinet prior to the erection of the device; and

(ii) The combined size of the two (2) faces or panels of the advertising device shall not exceed the maximum size stated in KRS 177.863(3)(a).

(d) An on-premise advertising device shall not affect spacing requirements for billboard advertising.

(e) A billboard advertising device may only be illuminated by white lights.

~~(9) [(9)]~~ Criteria for on-premise advertising devices. The following criteria are applicable to an an ~~[all]~~ on-premise advertising device ~~[devices]~~ located in a protected area:

(a) An on-premise advertising device shall not exceed the maximum size specified in KRS 177.863(3)(a) if it is placed within fifty (50) feet (fifteen and two-tenths (15.2) meters) of the advertised activity boundary line ~~[lines]~~.

(b). Not more than ~~[Only]~~ one (1) on-premise device may be located at a distance greater than fifty (50) feet (fifteen and two-tenths (15.2) meters) from the activity boundary line.

2. An individual on-premise business sign erected to advertise one (1) of the businesses in a shopping center, mall, or other combined businesses location shall not be located more than fifty (50) feet (fifteen and two-tenths (15.2) meters) from the activity boundary line of the individual business.

(c) An on-premise advertising device shall not exceed twenty (20) feet ~~(6.09 [42.09] meters)~~ in length, width, or height or 150 square feet (thirteen and eight-tenths (13.8) square meters) in area including border and trim but excluding supports if it is farther than fifty (50) feet from the activity boundary line.

(d) 1. An on-premise advertising device shall not be located more than 400 feet ~~(121.9 [424.6] meters)~~, measured within the property boundary, from the advertised activity boundary line.

2. If using a corridor to reach the location of the device, the corridor shall be not less than 100 feet (thirty and five-tenths (30.5) ~~[four tenths (30.4)]~~ meters) in width and shall be contiguous to an integral part of and of the same entitlement as the property on which the advertised activity is located.

3. Any other business activity which is in any manner foreign to the advertised activity shall not be located on or have use of the corridor between the advertised activity and the location of the device.

4. An activity incidental to the primary activity advertised shall not

be considered in taking measurements.

5. When taking measurements for the placement of an on-premise industrial park sign as described in paragraph (j) of this subsection, the access road into the industrial park shall be considered an integral part of the property on which the activity is taking place.

6. When taking measurements for the placement of a single on-premise sign advertising a shopping center, mall, or other combined businesses location, the combined parking area shall be considered as within the activity boundary line.

(e) There shall not be requirements for spacing between on-premise advertising devices.

(f) Only the following types of an on-premise advertising device ~~[devices]~~ shall be located so that they are visible from the main traveled way of an interstate, parkway, NHS, or FAP highway:

1. One ~~[These]~~ indicating the name and address of the owner, lessee or occupant of the property on which the advertising device is located;

2. One ~~[These]~~ showing the name or type of business or profession conducted on the property on which the advertising device is located;

3. Information required or authorized by law to be posted or displayed on the property;

4. One ~~[These]~~ advertising the sale or leasing of the property upon which the advertising device is located;

5. One ~~[These]~~ setting forth the advertisement of an activity conducted on or the sale of a product or service ~~[products]~~ on the property where the advertising device is located; or

6. A sign ~~[Signs]~~ with a maximum area of eight (8) square feet (0.743 ~~[0.736]~~ square meters) noting credit card acceptance or trading stamps.

(g) An on-premise advertising device shall advertise only the ~~[primary]~~ activity, service, or ~~[primary]~~ business conducted upon the property on which it is located.

(h) An on-premise electronic sign which contains, includes, or is illuminated by any flashing, intermittent, or moving lights shall only be used to advertise an activity, service, business, or product available on the property on which the sign is located or to present a public service message.

1. The advertising message may contain words, phrases, sentences, symbols, trade-marks, or logos.

2. A single message or segment of a message shall have a display time of at least two (2) seconds including the time needed to move the message onto the sign board, with all segments of the total message to be displayed within ten (10) seconds.

3. A message consisting of only one (1) segment may remain on the sign board any amount of time in excess of two (2) seconds.

4. An electronic sign requiring more than four (4) seconds to change from one (1) single message to another shall be turned off during the change interval.

5. A display traveling horizontally across the sign board shall move between sixteen (16) and thirty-two (32) light columns per second.

6. A display may scroll onto the sign board but shall hold for two (2) seconds including the scrolling time.

7. A display shall not include any art animation or graphic that portray motion, except for movement of a graphic onto or off of the sign board.

(i) Brand or trade names shall not be advertised on an on-premise advertising device when the sale of a product or service ~~[an item]~~ with the brand or trade name is incidental to the primary activity, service, or business.

~~[(f)] A marquee type on-premise advertising device, such as a device at a typical theater or cinema, may change messages from advertising one (1) legitimate on-premise activity to another. The message change shall not occur more than one (1) time per day.~~

(j) An industrial park type on-premise advertising device ~~[devices]~~

which shall be limited in area to 150 square feet (thirteen and eight-tenths (13.8) square meters) may contain ~~only~~ the following ~~messages~~:

1. The name of the industrial park;
2. The city or county associated with the industrial park; or
3. The name of the individual business or industries located in the industrial park.

(k) A single on-premise sign erected for a shopping center, mall, or other combined businesses location may:

1. Identify each of the individual businesses conducted at the location; or
2. Include a single display area used to advertise on-premise activities.

Section 4. Specific Requirements for Advertising Devices on Interstate and Parkway Highways. (1) Permit if visible. Except for a nonconforming advertising device, an advertising device which is located in a protected area and which is visible from the main traveled way of an interstate or parkway highway shall have an approved permit from the Transportation Cabinet, Department of Highways to be a legal advertising device. Advertising devices closer than fifty (50) feet (fifteen and two-tenths (15.2) meters) to the edge of the main traveled way of any interstate or parkway highway shall not be issued a permit.

(2) Criteria for billboard advertising devices.

(a) 1. A billboard advertising device [Billboard advertising devices] may be erected or maintained in a protected area of an interstate or parkway highway if the area is a commercially or industrially developed area as defined in Section 1 of this administrative regulation and if the advertising device complies with the provisions of KRS 177.830 through 177.890 [Chapter 477] and this administrative regulation as well as applicable county or city zoning ordinances or administrative regulations.

2. If a business or industry on which the designation as a commercially or industrially developed area was based is terminated or abandoned, leaving less than ten (10) separate enterprises, the billboard advertising device shall be reclassified as nonconforming.

3. If the Department of Highways reclassifies the device as nonconforming, the owner shall be notified.

(b) A billboard advertising device structure designed to be primarily viewed from an interstate or parkway highway shall not be erected within 500 feet (152.4 meters) of any other off-premise advertising device on the same side of the interstate or parkway highway unless separated by a building, natural obstruction or roadway in such manner that only one (1) off-premise advertising device located within the 500 feet (152.4 meters) is visible from the interstate or parkway highway at any one time.

(3) Prohibited advertising devices. The erection or existence of the following advertising devices shall not be permitted or allowed in a protected area of an interstate or parkway highway [areas]:

- (a) An advertising device which is advertising an activity that is illegal under state or federal law, or administrative regulation;
- (b) An obsolete advertising device;
- (c) An advertising device that is not clean, safe, and in good repair;
- (d) An advertising device that is not securely affixed to a substantial structure which is permanently attached to the ground;
- (e) An advertising device which attempts or appears to attempt to direct the movement of traffic or which interfere with, imitate or resemble any official traffic sign, signal or traffic control device;
- (f) An advertising device which prevents the driver of a vehicle from having a clear and unobstructed view of an official sign [signs] or approaching or merging traffic;
- (g) An advertising device which contains, includes or is illuminated by any flashing, intermittent, or moving lights, except for an on-premise device which meets the requirements of Section 3(9)(h) of this administrative regulation [providing public service information];

(h) An advertising device which uses lighting in any way unless it is so effectively shielded ~~[as]~~ to prevent beams or rays of light from being directed at any portion of the main traveled way of a highway, or unless it is of a low intensity or a low brilliance so as not to cause glare or not to impair the vision of the driver of any motor vehicle or to otherwise interfere with a [any] driver's operation of a motor vehicle;

(i) An advertising device which moves or has any animated or moving parts;

(j) An advertising device erected or maintained upon trees or painted or drawn upon rocks or other natural features;

(k) An advertising device exceeding 1,250 square feet ~~(116.1 [445] square meters)~~ in area, including border and trim but excluding supports;

(l) An advertising device erected upon or overhanging the right-of-way of any highway; or

(m) An advertising device which interferes with any official sign, signal or traffic control device.

(4)(a) To measure distances for the identification of a commercially or industrially developed area, two (2) lines shall be drawn perpendicular to the center line of the controlled interstate or parkway highway, extending from each side of the controlled highway.

(b) The first perpendicular line shall be drawn 100 feet from the outer edge of the first-encountered separate establishment which is within the area being considered as a commercially or industrially developed area.

(c) The second perpendicular line shall be drawn 100 feet from the outer edge of the last-encountered separate establishment which is within the area being considered as a commercially or industrially developed area.

(d) The distance between the first-encountered establishment and the last encountered establishment shall not exceed 1620 feet.

(e) Each perpendicular line shall extend for a distance of 660 feet from each edge of the right-of-way of the controlled highway.

(f) All area within the confines of the lines perpendicular to the center line of the highway shall be considered when establishing a commercially and industrially developed area.

(g) An enterprise or structure on either side of the controlled interstate or parkway highway within the confines of the lines perpendicular to the centerline of the highway may be counted as part of the ten (10) needed.

(h) A pictorial representation of an eligible commercially or industrially developed area is on the Transportation Cabinet document entitled "Measurement of Commercially or Industrially Developed Area". [The provisions of KRS 177.860(4) shall not be applicable to an advertising device erected or proposed to be erected in the protected area of an interstate or parkway highway unless it is in an area which is a commercially or industrially developed area as defined in Section 1 of this administrative regulation.]

Section 5. Specific Requirements for Advertising Devices on Federal-aid Primary and National Highway System Highways. (1) Billboard advertising devices on NHS and FAP highways. A billboard advertising device [Billboard advertising devices] may be permitted in a protected area of an NHS or FAP highway if it is [protected areas of FAP highways if they are] located in an unzoned commercial or industrial area [areas] or a commercial or industrial zone [zones] and if the device complies [devices comply] with applicable state, county, or city zoning ordinances or administrative regulations.

(a)1. It shall be legal to have a permitted billboard advertising device in an unzoned commercial and industrial area of an NHS or FAP highway if [as long as] there is a commercial, business, or industrial activity in the area.

2. Upon the termination or abandonment of the business or industry on which the unzoned commercial or industrial area was based, the billboard advertising device shall be reclassified as nonconforming.

3. If the Department of Highways reclassifies the device as nonconforming, the owner shall be notified.

(b) Except for a nonconforming advertising device, a billboard advertising device which is visible from the main traveled way of an NHS or FAP highway and in a protected area shall have an approved permit from the Department of Highways.

(c) An unzoned commercial or industrial area shall not be created when a commercial or industrial activity is located more than 300 feet (ninety-one and four-tenths (91.4) meters) from the right-of-way of the NHS or FAP highway.

(d) 1. Minimum spacing between billboard advertising devices in an unzoned commercial or industrial area (areae) shall be 300 feet (ninety-one and four-tenths (91.4) [two-tenths (91.2)] meters) unless separated by a building, roadway, or natural obstruction in a manner that only one (1) device located within the required spacing is visible from the highway at any time.

2. The minimum spacing requirement shall be reduced to 100 feet (thirty and four-tenths (30.4) meters) within an incorporated municipality which does [municipalities which do] not have comprehensive zoning.

(e) Minimum spacing between billboard advertising devices in any comprehensively zoned commercial or industrial area shall be 100 feet (thirty and four-tenths (30.4) meters) unless separated by a building, roadway or natural obstruction in a manner that only one (1) sign located within the required spacing is visible from the highway at any time.

(f) An advertising device [Advertising devices] which meet the criteria set forth in KRS 177.863(1) shall be prohibited.

(2) Establishing limits of an unzoned commercial or industrial area.

(a) In measuring distances for the determination of an unzoned commercial or industrial area near an NHS or FAP highway [highways], two (2) lines shall be drawn from the activity boundary line perpendicular to the centerline of the main traveled way to encompass the greatest longitudinal distance along the center line of the highway.

(b) Measurements for establishing unzoned commercial or industrial areas shall begin at the outside edge of the activity boundary lines and shall be measured 700 feet (213.4 [242.8] meters) in each direction.

(3) Nonbillboard off-premise advertising devices on NHS and FAP highways permitted.

(a) The owner of a nonbillboard off-premise advertising device shall apply for a permit in accordance with the procedures set forth in Section 6 of this administrative regulation. A metal tag corresponding to the permit shall not be issued by the Department of Highways.

(b) A nonbillboard off-premise advertising device shall not be permitted on or over the state-owned right-of-way of a NHS or [any] FAP highway.

(c) Only one (1) nonbillboard off-premise advertising device relating to a particular city, church, or civic organization may be erected in each direction of travel on any one (1) NHS or FAP highway.

(d) Spacing between two (2) nonbillboard off-premise advertising devices shall be 100 feet (thirty and four-tenths (30.4) meters).

(e) A nonbillboard off-premise advertising device shall not affect the spacing requirements for billboards.

(f) A church or civic club type nonbillboard advertising device [devices] which shall be limited in area to eight (8) square feet (0.743 [0.736] square meters) may contain only the following messages:

1. Name and address of the church or civic club;
2. Location and time of meetings, and a directional arrow; or
3. Special events such as Vacation Bible School, revival, etc.

These temporary messages shall be in lieu of the original or a part of the original message and shall not exceed the maximum of eight (8) square feet (0.743 [0.736] square meters) in area.

(4) Public service sign criteria. A public service sign [signs] may

be allowed on school bus shelter if it conforms [if they conform] to the following requirements:

(a) The maximum size for a public service sign shall be thirty-two (32) square feet (2.97 [2.944] square meters) in area including border and trim.

(b) 1. The public service sign shall contain a message of benefit to the public which occupies not less than fifty (50) percent of the area of the sign.

2. The remainder of the sign may identify the donor, sponsor or contributor of the school bus shelter.

3. The sign shall not contain any other message.

(c) Only one (1) public service sign on each school bus shelter shall face in any one (1) direction of travel.

Section 6. Required Permits for Advertising Devices. (1) Permit required.

(a) Except for a nonconforming advertising device, a permit shall be required from the Department of Highways for any off-premise advertising device located in a protected area of an interstate, parkway, NHS, or FAP highway route.

(b) A permit shall be required for each on-premise advertising device on interstate and parkway highway routes.

(c) Compliance with the provisions of this administrative regulation is required for on-premise advertising devices on NHS and FAP routes.

(d) By January 1, 1994 each permitted off-premise advertising device shall have a metal tag supplied by the department attached to the device.

(2) Application for an advertising device permit.

(a) 1. Application for an advertising device permit shall be made on Transportation Cabinet form TC 99-31 as revised in March 1997 [December 1995]. The application form, completed in triplicate, shall be submitted to the jurisdictional highway district office of the proposed advertising device. [The application form is hereby incorporated by reference in Section 13 of this administrative regulation.]

2. The issuance of approved advertising device applications as they relate to the required spacing between billboards shall be determined on a "first-come, first-served" basis.

(b) The application for an advertising device permit shall be accompanied by the following:

1. Vicinity map;
2. Applicant's plot plan;
3. Location, milepoint and sign plans for the advertising device;
4. A copy of all applicable local permits;
5. A copy of the lease or ownership of the proposed billboard site, if applicable; and

6. If the request is for an on-premise advertising device, the application shall include a detailed description of the exact wording of the message to be conveyed on the device. This information may be furnished either by photograph, [or] drawing, or illustration.

(c) The applicant shall submit three (3) copies of all required documentation.

(3) An approved advertising device application shall be valid for only one (1) year. If the device has not been constructed and inspected for compliance in that year, the applicant shall apply for renewal of the approved application prior to the end of the year of validity.

Section 7. Illegal or Unpermitted Advertising Devices. (1) Unpermitted advertising devices. The jurisdictional chief district engineer or his representative shall notify the sign and property owner of an unpermitted or illegal advertising device by registered letter that the advertising device is in violation of Kentucky's advertising device laws or administrative regulation under the following conditions:

(a) The advertising device which is not located on state-owned highway right-of-way has not been issued a permit; or

(b) The advertising device which is not located on state-owned

highway right-of-way for which a permit has been issued is found in violation of state law or this administrative regulation.

(2) Content of notice.

(a) 1. If the advertising device appears to be eligible for a permit, the owner shall be given a period of ten (10) days from the date of notification by registered letter, to make application for a permit.

2. If by the end of the ten (10) days the owner does not submit a completed application to the Department of Highways, the owner shall be sent a new notice allowing him a period of thirty (30) days from the date of the second notice to remove the device.

(b) If an advertising device previously issued a permit is changed after the device received approval from the Department of Highways, the owner shall be allowed a period of thirty (30) days from the date of notification by registered letter for making the adjustments or corrections necessary to bring the advertising device into compliance with state law or administrative regulation.

(c) If a permit is not necessary for a particular advertising device but the advertising device is not in compliance with KRS Chapter 177 or this administrative regulation, the owner shall be allowed a period of thirty (30) days from the date of notification by registered letter for making any necessary adjustments or corrections to the advertising device.

(d) An advertising device which is ineligible for a permit or otherwise in violation of KRS Chapter 177 or this administrative regulation shall be declared to be a public nuisance and the advertising device shall be removed by the permittee or owner within thirty (30) days after written notification that the advertising device is in violation.

(e) If after the thirty (30) days the noncompliant advertising device remains, the Department of Highways shall notify the owner or permittee of the action which it intends to take to have the noncompliant advertising device removed or otherwise brought into compliance.

(3) Request for reconsideration. ~~(Appeal of notice.~~

~~(a)~~ If the permittee or owner disagrees with a ~~[any]~~ notice received from the Department of Highways, within twenty (20) days of receipt of the notice, he may:

(a) Contact the person who sent the notice to:

1. Request reconsideration;

2. ~~[unofficially protest the notice and to]~~ Attempt to correct a problem ~~[any problems]~~ with his advertising device; or

3. ~~[to]~~ Provide additional information to the Department of Highways.

(b) File an appeal in accordance with Section 9 of this administrative regulation. ~~[If the owner or permittee is not satisfied with the result of his action taken pursuant to paragraph (a) of this subsection, he may appeal to the Transportation Cabinet, Office of General Counsel, 501 High Street, 10th Floor, State Office Building, Frankfort, Kentucky 40622, within twenty (20) days of the date of the Department of Highway's written response.~~

~~(c) The owner or permittee may appeal directly to the Transportation Cabinet, Office of General Counsel at the address set forth in paragraph (b) of this subsection without following the procedure set forth in paragraph (a) of this subsection.]~~

Section 8. Just Compensation for the Removal of an Advertising Device. (1) Buying rights, title, etc. When the Transportation Cabinet determines that it is necessary to remove either a legal or nonconforming advertising device, just compensation shall be paid for the following:

(a) The taking from the owner of the advertising device all right, title, leasehold and interest in the advertising device; or

(b) The taking from the owner of the real property on which the advertising device is located or the right to erect and maintain the advertising device thereon.

(2) Just compensation procedures.

(a) Payment of just compensation shall be determined by an appraisal or value finding.

(b) A nonconforming advertising device shall not qualify for just compensation if:

1. It is destroyed, abandoned, or discontinued;

2. It receives more than routine maintenance; or

3. It does not comply with the provisions of Section 4(3) of this administrative regulation and KRS 177.863.

Section 9. Appeal Procedure. (1)(a) Any party aggrieved by the action of the Transportation Cabinet pursuant to the provisions of this administrative regulation within twenty (20) days of the date of the notice or action may file a written appeal with the Office of General Counsel in the Transportation Cabinet, 501 High Street, Frankfort, Kentucky 40622.

(b) The appeal shall set forth the nature of the complaint and the grounds for the appeal.

(2) The administrative hearing and subsequent procedures shall be conducted pursuant to the provisions of KRS Chapter 13B.

~~[(3) If the appellant wishes to continue the appeal after the administrative hearing set forth in KRS Chapter 13B, the court of proper jurisdiction for the filing of an appeal shall be Franklin Circuit Court.]~~

Section 10. Scenic Byways. (1) On any NHS, FAP, interstate, or parkway highway designated by the Transportation Cabinet as a scenic byway pursuant to 603 KAR 3:090, additional outdoor advertising devices shall not be erected, allowed or permitted after the date of the designation of the highway as scenic.

(2) The outdoor advertising devices legally in existence at the time of designation of the highway as scenic may continue to have routine maintenance.

(3) The sponsor of a scenic byway application ~~[pursuant to 603 KAR 3:090]~~ for a highway which is not an NHS, FAP, interstate, or parkway highway may petition the Transportation Cabinet to impose the outdoor advertising device restrictions set forth in this section.

(4) The following NHS and FAP highways in Kentucky have been designated as scenic byways ~~[pursuant to 603 KAR 3:090]~~:

|                                                                                         | From                     | To                       |
|-----------------------------------------------------------------------------------------|--------------------------|--------------------------|
|                                                                                         | Milepoints               |                          |
| (a) Cordell Hull Highway in Barren County:                                              |                          |                          |
| KY 70 - From I-65 overpass to KY 90.                                                    | 5.118                    | 5.359                    |
| KY 90 - From KY 70 at Cave City via Happy Valley Road to US 31E (Glasgow Bypass).       | .000                     | 9.923                    |
| US 31E - From KY 90 to US 68.                                                           | 14.849                   | 14.258                   |
| US 31EX - From US 68 to Washington Street around Courthouse Square in Glasgow.          | 1.386 <del>[1.516]</del> | 1.516 <del>[1.384]</del> |
| US 68 - From US 31E to US 31EX.                                                         | 11.741                   | 12.577                   |
| (b) Old Kentucky Turnpike in Larue County:                                              |                          |                          |
| US 31E - From the entrance to the Abraham Lincoln Birthplace National Historic Site via |                          |                          |

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| Hodgenville to the Nelson County Line.                                             | 7.310            | 20.725            |
| (c) Old Kentucky Turnpike in Nelson County:                                        |                  |                   |
| US 31E - From the Larue County Line to US 62 in Bardstown.                         | .000             | 14.205            |
| US 62 - From US 31E to US 150.                                                     | 14.294           | 14.653            |
| US 150 - From US 62 to entrance of My Old Kentucky Home State Park.                | 0.000            | 0.240(375)        |
| (d) Shakertown Road in Mercer County:                                              |                  |                   |
| US 68 - From 1.2 miles east of Shaker Village to 1.2 miles west of Shaker Village. | 15.652           | 13.252            |
| (e) Duncan Hines Scenic Highway in Warren County:                                  |                  |                   |
| KY 101 - From US 31W (south) to Edmonson County Line.                              | 11.641           | 12.850            |
| US 31E - From Duncan Hines former home to KY 446 overpass.                         | 16.559           | 17.569            |
| (f) Duncan Hines Scenic Highway in Edmonson County:                                |                  |                   |
| KY 101 - From Warren County Line to KY 259 at Rhoda.                               | 0.000            | 4.131             |
| KY 259 - From KY 101 at Rhoda to KY 70 (east).                                     | 9.242            | 12.096            |
| KY 70 - From KY 259 (south) to KY 259 (north).                                     | 12.388           | 9.939             |
| KY 259 - From KY 238 at Bee Spring to KY 738.                                      | 18.998           | 17.568            |
| (g) Great River Road in Fulton County:                                             |                  |                   |
| KY 239 - From Hickman County Line to KY 94 in Cayce.                               | 6.379            | 3.617             |
| KY 94 - From the Tennessee State Line to KY 1099 west of Hickman.                  | 0.000            | 10.902            |
| KY 94 - From KY 1099 east of Hickman to KY 239 in Cayce.                           | 13.642           | 22.121            |
| (h) Great River Road in Hickman County:                                            |                  |                   |
| KY 239 - From Fulton County Line to KY 123.                                        | 0.000            | 3.753             |
| KY 123 - From KY 239 to Proposed FAP 94 at Hailwell.                               | 10.048           | 15.788            |
| KY 123 - From Bottery Road in South Columbus to KY 58.                             | 20.882           | 21.787            |
| (i) Pine Mountain Road in Letcher County:                                          |                  |                   |
| US 119 - From KY 15 in Whitesburg to KY 806 near Oven Fork.                        | 17.308           | 9.155             |
| (j) US 68 Segment 1 in Boyle County:                                               |                  |                   |
| US 68 - From US 150 in Perryville to US 150 in Perryville.                         | 7.369            | 7.475             |
| <del>(k) US 68 Segment 1 in Jessamine County:</del>                                | <del>0.000</del> | <del>11.610</del> |
| <del>US 68 - From Mercer County Line to 0.5 miles south of KY 1980.</del>          |                  |                   |
| (k) US 68 Segment 1 in Mercer County:                                              |                  |                   |
| US 68 - From US 127 at Mooreland Avenue to Jessamine County Line.                  | 6.752            | 20.104            |
| (l) US 68 Segment 1 in Jessamine County:                                           |                  |                   |
| US 68 - From Mercer County Line to 0.5 miles south of KY 1980.                     | 0.000            | 10.610            |
| (m) US 68 Segment 2 in Fayette County:                                             |                  |                   |
| US 68 - From Swigert Avenue to Bourbon County Line.                                | 10.565           | 15.767            |
| (n) US 68 Segment 2 in Bourbon County:                                             |                  |                   |
| US 27/68 - From Fayette County Line to US 68X in Paris.                            | 0.000            | 6.765             |
| US 68X - From 10th Street to 8th Street in Paris.                                  | 1.366            | 1.487             |
| US 68X - From Paris Bypass to North Middletown Road in Paris.                      | 2.583            | 2.772             |
| US 68 - From US 68X to the Nicholas County Line.                                   | 2.360            | 10.814            |
| (o) <del>(n)</del> US 68 Segment 2 in Nicholas County:                             |                  |                   |
| US 68 - From Bourbon County Line to KY 32/36.                                      | 0.000            | 3.717             |
| (p) <del>(o)</del> US 68 Segment 3 in Nicholas County:                             |                  |                   |
| US 68 - From the Licking River Bridge to the Robertson County Line.                | 11.687           | 12.211            |
| (q) <del>(p)</del> US 68 Segment 3 in Robertson County:                            |                  |                   |
| US 68 - From Nicholas County Line to the Fleming County Line.                      | 0.000            | 1.357             |
| (r) <del>(q)</del> US 68 Segment 3 in Fleming County:                              |                  |                   |
| US 68 - From Robertson County Line to the Mason County Line.                       | 0.000            | 5.423             |
| (s) <del>(r)</del> US 68 Segment 3 in Mason County:                                |                  |                   |
| US 68 - From Fleming County Line to US 62 in Washington.                           | 0.000            | 11.854            |
| US 62 - From KY 2515 to Ohio State Line.                                           | 13.381           | 18.000            |
| (t) KY 89 (US 421 in Jackson County):                                              |                  |                   |
| US 421 - From the junction with KY 89 north to the junction with KY 89 south.      | 14.261           | 14.808            |

Section 11. Identification of NHS and FAP Highways. The following are the FAP highway segments as designated on June 1, 1991 and the current NHS highway segments which are governed by the provisions of this administrative regulation. If in existence, a noncardinal, one (1) way couplet shall also be part of the NHS and FAP system.

|                                                                                   | Milepoint |        |
|-----------------------------------------------------------------------------------|-----------|--------|
|                                                                                   | From      | To     |
| (1) Adair County:                                                                 |           |        |
| KY 55 - From Cumberland Parkway in Columbia to the Taylor County Line.            | 10.059    | 19.006 |
| KY 80 - From KY 55 (Courthouse Square) via Burkesville RD in Columbia to KY 61 N. | 11.775    | 12.282 |
| KY 61 - From KY 80 in Columbia to Green County Line.                              | 15.248    | 23.997 |
| (2) Allen County:                                                                 |           |        |
| US 231 - From US 31E northwest of Scottsville to Warren County Line.              | .000      | 9.075  |

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|----------------------------------------------------------------------------------------------------------------------------------------------|------------------|------------------|
| US 31E - From Tennessee State Line via Scottsville Bypass to Barren County Line.                                                             | .000             | 19.189           |
| (3) Anderson County:                                                                                                                         |                  |                  |
| US 127 - From Mercer County Line to US 127 Bypass.                                                                                           | .000             | 2.535            |
| US 127B - From US 127 south of Lawrenceburg to US 127 north of Lawrenceburg.                                                                 | .000             | 6.656            |
| US 127 - From US 127 Bypass to Franklin County Line.                                                                                         | 8.897            | 11.120           |
| KY 151 - From US 127 Bypass to Franklin County Line.                                                                                         | .000             | 4.587            |
| (4) Ballard County:                                                                                                                          |                  |                  |
| US 51 - From Carlisle County Line via 4th Street in Wickliffe to Illinois State Line.                                                        | .000             | 8.297            |
| US 60 - From Green Street in Wickliffe via 4th Street and Lee Street via Barlow and Kevil to McCracken County Line.                          | .000             | 16.937           |
| KY 121 - From Carlisle County Line to 4th Street in Wickliffe.                                                                               | .000             | 8.609            |
| (5) Barren County:                                                                                                                           |                  |                  |
| KY 70 - From I 65 at Cave City to KY 90.                                                                                                     | 5.118            | 5.359            |
| US 68 - From US 31E (South Green Street) to KY 90 at Broadway.                                                                               | 12.577           | 12.650           |
| KY 90 - From KY 70 at Cave City via Happy Valley Road to US 31E (Glasgow Bypass).                                                            | .000             | 9.923            |
| KY 90 - From US 68 (Broadway) in Glasgow to Metcalfe County Line.                                                                            | 9.923            | 22.022           |
| US 68 - From US 31E (Glasgow Bypass) via Main Street to US 31EX (Business) (N Race).                                                         | 11.741           | 12.577           |
| US 31EX - From Washington Street in Glasgow via South Green Street to US 68 (E Main St).                                                     | 1.384            | 1.461            |
| US 31EX - From US 68 (East Main Street) via West Main Street to North Race Street.                                                           | 1.461            | 1.516            |
| US 31E - From Allen County Line via Glasgow Bypass to KY 90.                                                                                 | .000             | 14.849           |
| (6) Bell County:                                                                                                                             |                  |                  |
| US 25E - From Tennessee [Virginia] State Line to Knox County Line.                                                                           | .000             | 18.711           |
|                                                                                                                                              |                  | [19.714]         |
| US 119 - From US 25E to Harlan County Line.                                                                                                  | .000             | 15.756           |
| KY 3085 - From KY 2014 via Old US 25E to Knox County Line.                                                                                   | .000             | 2.025            |
| (7) Bourbon County:                                                                                                                          |                  |                  |
| US 27 - From Fayette County Line via Lexington Road and Paris Bypass to Harrison County Line.                                                | .000             | 15.435           |
| US 68 - From US 27 in Paris via Paris Bypass to Nicholas County Line.                                                                        | .000             | 10.814           |
| US 460 - From Scott County Line to Paris Bypass.                                                                                             | .000             | 7.696            |
| US 68X - From 10th Street via Main Street to 8th Street in Paris.                                                                            | 1.366            | 1.487            |
| US 68X - From Paris Bypass via Carlisle Road to North Middletown Road in Paris.                                                              | 2.583            | 2.772            |
| US 460 - From US 68X (Carlisle Road) via North Middletown Road to the Montgomery County Line.                                                | 9.150            | 21.933           |
| KY 627 - From Clark County Line via 10th Street to US 68X (Main Street).                                                                     | .000             | 9.511            |
| US 460 - From US 68X (Main Street) via 8th Street to US 27 (Paris Bypass).                                                                   | 7.696            | 9.150            |
| (8) Boyd County:                                                                                                                             |                  |                  |
| US 23 - From Lawrence County Line via Court Street in Catlettsburg, and Greenup Avenue and Winchester Avenue in Ashland to Greenup Co. Line. | .000             | 21.042           |
| KY 180 - From south limits of I-64 Interchange to US 60.                                                                                     | .627             | 2.518            |
| US 60 - From KY 180 near Cannonsburg via 13th Street to Winchester Avenue in Ashland.                                                        | 4.023            | 12.198           |
| US 23S - From US 60 (Winchester Avenue) via 13th Street Bridge to Ohio State Line.                                                           | .000             | .591             |
| (9) Boyle County:                                                                                                                            |                  |                  |
| KY 34 - From US 150 (Main Street) in Danville via Lexington Road to Garrard County Line.                                                     | 12.406           | 17.770           |
| KY 52 - From US 150 to Garrard County Line.                                                                                                  | .000             | 5.114            |
| US 127 - From Lincoln County Line to US 150 (3rd and Main Street intersection).                                                              | .000             | 5.440            |
| US 127 - From US 127B near KY 2186 to Mercer County Line.                                                                                    | 8.083            | 10.319           |
| <del>existing alignment near Bonta Lane.</del>                                                                                               | <del>.000</del>  | <del>2.000</del> |
| <del>US 127 - From proposed alignment near Bonta Lane to south urban limits of Danville.</del>                                               | <del>1.864</del> | <del>2.072</del> |
| US 127B - From US 127 via the Danville Bypass to US 127 near [at] KY 2168.                                                                   | .000             | 5.270            |
| <del>US 127 - From KY 2168 to Mercer County Line.</del>                                                                                      | <del>7.867</del> | <del>8.849</del> |
| <del>US 127 - From US 127B in Danville via 4th and 3rd Streets to US 150 (Main Street).</del>                                                | <del>2.072</del> | <del>4.057</del> |
| US 150 - From Washington County Line to US 68 in Perryville.                                                                                 | .000             | 4.495[504]       |
| US 68 - From US 150 in Perryville to US 150 in Perryville.                                                                                   | 7.369            | 7.475            |
| US 150 - From US 68 in Perryville to Lincoln County Line.                                                                                    | 4.495            | 18.766           |
| US 127 - From US 150 at Maple Street Intersection via Main St. to US 150 at 3rd Street Intersection.                                         | 5.978            | 5.440            |
|                                                                                                                                              | [6.495]          | [4.057]          |
| US 150B - From US 127 (Hustonville Road) to US 150 (Standford Road).                                                                         | .000             | 2.272            |
| (10) Bracken County:                                                                                                                         |                  |                  |
| KY 9 - From Mason County Line to Pendleton County Line.                                                                                      | .000             | 19.857           |
| (11) Breathitt County:                                                                                                                       |                  |                  |
| KY 15 - From Perry County Line to Wolfe County Line.                                                                                         | .000             | 27.505           |
| (12) Breckinridge County:                                                                                                                    |                  |                  |
| KY 259 - From Grayson County Line to KY 79.                                                                                                  | .000             | 7.901            |
| KY 79 - From KY 259 to US 60.                                                                                                                | 5.294            | 14.990           |
| KY 3199 - From Hancock County Line to US 60X (Business).                                                                                     | .000             | 1.260[056]       |
| US 60X - From KY 3199 to US 60 west.                                                                                                         | .000             | 2.500            |
| US 60 - From US 60X (Business) via the Cloverport and Hardinsburg Bypass to the Meade County Line.                                           | 3.500            | 31.788           |

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## (13) Bullitt County:

|                                                                                                                  |                  |                  |
|------------------------------------------------------------------------------------------------------------------|------------------|------------------|
| US 31E - From Spencer County Line via the Harold Bradley Allgood Memorial Highway to the Jefferson County Line.  | .000             | 5.185            |
| <del>(to US 31E Mainline (Main St in Mt. Washington.)</del>                                                      | <del>.000</del>  | <del>2.913</del> |
| <del>US 150 - From point on US 31E Mainline via Mt. Washington Bypass to another point on US 31E Mainline.</del> | <del>.000</del>  | <del>2.000</del> |
| <del>US 31E - From proposed Mt. Washington Bypass to Jefferson County Line.</del>                                | <del>5.320</del> | <del>5.465</del> |

## (14) Caldwell County:

|                                                           |      |       |
|-----------------------------------------------------------|------|-------|
| US 641 - From Lyon County Line to Crittenden County Line. | .000 | 4.269 |
|-----------------------------------------------------------|------|-------|

## (15) Calloway County:

|                                                                        |        |        |
|------------------------------------------------------------------------|--------|--------|
| KY 121 - From US 641 to Graves County Line.                            | 14.075 | 24.156 |
| US 641 - From Tennessee State Line via Murray to Marshall County Line. | .000   | 17.444 |

## (16) Campbell County:

|                                                                                                |                 |                   |
|------------------------------------------------------------------------------------------------|-----------------|-------------------|
| <del>US 27 - From Pendleton County Line to US 27 South.</del>                                  | <del>.000</del> | <del>22.250</del> |
| US 27 - From Pendleton County Line [US 27 South (York St.)] via new bridge to Ohio State Line. | .000            | 22.622[4.409]     |
| KY 8 - From the Kenton County Line to the I-471 underpass.                                     | .000            | .998              |
| KY 1120 - From Kenton County Line to York Street.                                              | .000            | .668              |
| KY 1998 - From US 27 to KY 8.                                                                  | 2.813           | 5.014             |
| KY 471 - From US 27 to I-471 (Eastbound I-275 Overpasses).                                     | .000            | .729              |
| KY 9 - From Pendleton County Line to north limits of I-275 Interchange.                        | .000            | 17.978            |

## (17) Carlisle County:

|                                                                                                      |      |        |
|------------------------------------------------------------------------------------------------------|------|--------|
| US 51 - From Hickman County Line to proposed location of the Great River Road.                       | .000 | 10.725 |
| US 51 - From a point on US 51 Mainline via the proposed Great River Road to the Ballard County Line. | .000 | 1.800  |
| US 94 - From Hickman County Line via the proposed Great River Road to proposed US 51.                | .000 | 9.000  |
| KY 121 - From Graves County Line to Ballard County Line.                                             | .000 | 9.714  |

## (18) Carter County:

|                                                     |        |        |
|-----------------------------------------------------|--------|--------|
| KY 7 - From Elliot County Line to US 60 in Grayson. | .000   | 10.865 |
| KY 1 - From US 60 to KY 9.                          | 10.646 | 11.934 |
| KY 9 - From KY 1 and KY 7 to Lewis County Line.     | .000   | 18.262 |

## (19) Casey County:

|                                                           |      |        |
|-----------------------------------------------------------|------|--------|
| US 127 - From Russell County Line to Lincoln County Line. | .000 | 23.715 |
|-----------------------------------------------------------|------|--------|

## (20) Christian County:

|                                                                                    |        |        |
|------------------------------------------------------------------------------------|--------|--------|
| US 41A - From Tennessee State Line to end of north exit ramp of Pennyryle Parkway. | .000   | 13.611 |
| US 41LP - From KY 107 to northwest urban limits of Hopkinsville at KY 91/1682.     | .000   | 5.100  |
| KY 3493 - From US 41A at a point south of Hopkinsville to KY 107.                  | .000   | 1.892  |
| US 41 - From Todd County Line to southbound exit ramp of the Pennyryle Parkway.    | .000   | 10.325 |
| US 41 - From US 68 to US 68 in Hopkinsville.                                       | 11.909 | 12.441 |
| US 68 - From Trigg County Line to Todd County Line.                                | .000   | 21.126 |
| KY 1682 - From US 68 to Pennyryle Parkway.                                         | .000   | 3.904  |

## (21) Clark County:

|                                                                           |       |        |
|---------------------------------------------------------------------------|-------|--------|
| KY 627 - From Madison County Line to KY 1958.                             | .000  | 6.360  |
| KY 1958 - From KY 627 to north limits of the I-64 interchange.            | .000  | 2.860  |
| KY 627 - From southern limits of I-64 Interchange to Bourbon County Line. | 9.154 | 14.812 |

## (22) Clay County:

|                                                                                   |        |        |
|-----------------------------------------------------------------------------------|--------|--------|
| KY 80 - From south limits of interchange ramps of Daniel Boone Parkway to US 421. | 7.101  | 7.537  |
| US 421 - From KY 80 to Jackson County Line.                                       | 16.915 | 32.841 |

## (23) Clinton County:

|                                                            |      |        |
|------------------------------------------------------------|------|--------|
| KY 90 - From Cumberland County Line to Wayne County Line.  | .000 | 12.816 |
| US 127 - From Tennessee State Line to Russell County Line. | .000 | 20.967 |

## (24) Crittenden County:

|                                                           |      |        |
|-----------------------------------------------------------|------|--------|
| US 60 - From Livingston County Line to Union County Line. | .000 | 23.018 |
| US 641 - From Caldwell County Line to US 60.              | .000 | 7.494  |

## (25) Cumberland County:

|                                                           |      |        |
|-----------------------------------------------------------|------|--------|
| KY 90 - From Metcalfe County Line to Clinton County Line. | .000 | 22.450 |
| KY 61 - From Tennessee State Line to KY 90 West.          | .000 | 13.701 |

## (26) Daviess County:

|                                                                                                                                          |        |        |
|------------------------------------------------------------------------------------------------------------------------------------------|--------|--------|
| Proposed FAP 10 - From US 60 near Maceo to Indiana State Line.                                                                           | .000   | 3.800  |
| US 60 - From Owensboro Beltline to US 60 (Lewisport Road).                                                                               | .000   | 2.600  |
| US 60 - From US 60 Bypass West of Owensboro to Hancock County Line.                                                                      | 10.179 | 27.979 |
| US 60B - From US 60 to US 60 (Lewisport Road).                                                                                           | .000   | 10.212 |
| US 60S - From KY 54 to Owensboro Beltline.                                                                                               | .000   | .500   |
| KY 54 - From US 431 (Frederica Street) east limits of US 60 Bypass Interchange.                                                          | .000   | 2.663  |
| US 431 - From McLean County Line to 2nd Street.                                                                                          | .000   | 14.670 |
| KY 2245 - From US 431 (Frederica Street) via 5th Street to US 631 (Lewis Street).                                                        | .000   | .246   |
| US 231 - From US 60 Bypass via Hartford Road, Breckinridge Street, 5th Street, Lewis Street and Ohio River Bridge to Indiana State Line. | 11.243 | 15.721 |
| KY 2235 - From US 60 via Triplet Street to US 60.                                                                                        | .000   | .145   |

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| KY 1467 - From US 231 (5th Street) via Breckinridge Street and Leitchfield Road to 2nd Street.                                                                                         | .000              | .234              |
| (27) Edmonson County:                                                                                                                                                                  |                   |                   |
| KY 101 - From Warren County Line to KY 259 at Rhonda.                                                                                                                                  | .000              | 4.131             |
| KY 259 - From KY 101 at Rhonda to KY 70 eastbound.                                                                                                                                     | 9.242             | 12.096            |
| KY 70 - From KY 259 southbound to KY 259 northbound.                                                                                                                                   | 9.939             | 12.388            |
| KY 259 - From KY 70 westbound to Grayson County Line.                                                                                                                                  | 12.096            | 22.692            |
| (28) Elliott County:                                                                                                                                                                   |                   |                   |
| KY 7 - From Morgan County Line to Carter County Line.                                                                                                                                  | .000              | 19.312            |
| (29) Fayette County:                                                                                                                                                                   |                   |                   |
| US 27 - From Jessamine County Line via Nicholasville Road, South Limestone, Euclid Avenue, South Upper, Bolivar, <del>and South</del> Broadway, and Paris Pike to Bourbon County Line. | .000              | 15.767            |
| <del>to US 25.</del>                                                                                                                                                                   | <del>.000</del>   | <del>6.941</del>  |
| US 25 - From Main Street (US 421) via Newtown Pike to KY 922 at Georgetown Street.                                                                                                     | 14.632            | 15.237            |
| KY 4 - The entire length of New Circle Road.                                                                                                                                           | .000              | 19.283            |
| KY 922 - From US 25 (Georgetown Road) via Newtown Pike to north limits of I-75 Interchange.                                                                                            | .000              | 3.055             |
| <del>US 27 - From KY 4 (New Circle Road) via Paris Pike to Bourbon County Line.</del>                                                                                                  | <del>8.460</del>  | <del>15.767</del> |
| US 60 - From Woodford County Line to I-75                                                                                                                                              | .000              | 12.805            |
| <del>US 27/68.</del>                                                                                                                                                                   | <del>.000</del>   | <del>8.162</del>  |
| US 68 - From southeast urban limits of Lexington at Jessamine County Line via Harrodsburg Road to KY 4.                                                                                | .000              | 3.110             |
| US 421 - From KY 4 via West Main Street to US 25.                                                                                                                                      | .000              | 1.798             |
| US 25 - From KY 418 via Richmond Road, East Main Street, and West Main Street to US 421.                                                                                               | 8.244             | 14.632            |
| KY 418 - From US 25 to southeast limits of I-75 Interchange.                                                                                                                           | .000              | 2.602             |
| (30) Fleming County:                                                                                                                                                                   |                   |                   |
| KY 32 - From Rowan County Line to KY 11 at a point southwest of Flemingsburg.                                                                                                          | 10.615            | 28.293            |
| KY 11 - From junction with KY 32 at point southwest of Flemingsburg to Mason County Line.                                                                                              | 10.630            | 17.105            |
|                                                                                                                                                                                        | <del>10.860</del> | <del>17.263</del> |
| US 68 - From Robertson County Line to Mason County Line.                                                                                                                               | .000              | 5.423             |
| (31) Floyd County:                                                                                                                                                                     |                   |                   |
| KY 114 - From Magoffin County Line to KY 1428 in Prestonsburg.                                                                                                                         | .000              | 12.430            |
| US 23 - From Pike County Line to Johnson County Line.                                                                                                                                  | .000              | 21.878            |
| <del>KY 114 ramp.</del>                                                                                                                                                                | <del>.000</del>   | <del>15.389</del> |
| KY 80 - From Knott County Line to US 23.                                                                                                                                               | .000              | 14.435            |
| KY 1428 - From KY 114 in Prestonsburg to KY 321 in Prestonsburg.                                                                                                                       | 15.605            | 16.091            |
| KY 321 - From KY 1428 in Prestonsburg to KY 3 <del>US 23</del> south of Auxier.                                                                                                        | .000              | 4.278             |
| KY 3 - From KY 321 south of Auxier to KY 321 near Auxier.                                                                                                                              | 1.060             | 2.672             |
| KY 321 - From KY 3 to Johnson County Line.                                                                                                                                             | 4.278             | 5.172             |
| <del>US 23 - From KY 321 south of Auxier to Johnson County Line.</del>                                                                                                                 | <del>21.592</del> | <del>24.014</del> |
| (32) Franklin County:                                                                                                                                                                  |                   |                   |
| US 127 - From Anderson County Line via Capital Plaza-West Frankfort Connector Wilkerson Boulevard to Owen County Line.                                                                 | .000              | 21.507            |
|                                                                                                                                                                                        |                   | <del>22.098</del> |
| US 421 - From US 127 (Owenton Road) via Thornhill Bypass to US 460 (Georgetown Road).                                                                                                  | 3.072             | 4.523[0]          |
| KY 151 - From Anderson County Line to I-64.                                                                                                                                            | .000              | 2.222             |
| US 60 - From US 460 at Georgetown Road in Frankfort via Versailles Road to Woodford County Line.                                                                                       | 10.716            | 14.038            |
| US 421 - From US 127 to Henry County Line.                                                                                                                                             | 4.523[0]          | 17.886            |
| US 460 - From US 60 at Versailles Road in Frankfort via Georgetown RD to Scott County Line.                                                                                            | .000              | 6.114             |
| KY 676 - From US 127 (Lawrenceburg Road) via East-West Connector in Frankfort to US 60 (Versailles Road).                                                                              | .000              | 5.287             |
| (33) Fulton County:                                                                                                                                                                    |                   |                   |
| US 51 - From south limits of Purchase Parkway to Hickman County Line.                                                                                                                  | .000              | 5.472             |
| KY 239 - From Hickman County Line to KY 94 in Cayce.                                                                                                                                   | 6.379             | 3.617             |
| KY 94 - From the Tennessee State Line to KY 1099 west of Hickman.                                                                                                                      | 0.000             | 10.902            |
| KY 94 - From KY 1099 east of Hickman to KY 239 in Cayce.                                                                                                                               | 13.642            | 22.121            |
| KY 1099 - Fulton Bypass from KY 94 west of Hickman to KY 94 east of Hickman.                                                                                                           | .000              | 2.966             |
| (34) Gallatin County:                                                                                                                                                                  |                   |                   |
| KY 35 - From Owen County Line at Sparta to I-71.                                                                                                                                       | .000              | 2.128             |
| (35) Garrard County:                                                                                                                                                                   |                   |                   |
| US 27 - From Lincoln County Line to Jessamine County Line.                                                                                                                             | .000              | 16.510            |
| KY 34 - From Boyle County Line to US 27.                                                                                                                                               | .000              | 1.610             |
| KY 1295 - From KY 52 to Madison County Line.                                                                                                                                           | .000              | 6.928             |
| KY 52 - From Boyle County Line to KY 954.                                                                                                                                              | .000              | 13.476            |
| KY 954 - From KY 52 to Madison County Line.                                                                                                                                            | .000              | 7.564             |
| (36) Graves County:                                                                                                                                                                    |                   |                   |
| US 45 - From southern interchange of Purchase Parkway to McCracken County Line.                                                                                                        | 18.950            | 31.580            |
| KY 80 - From Purchase Parkway via West Broadway to US 45 at 7th Street in Mayfield.                                                                                                    | 9.638             | 11.461            |

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| KY 58 - From US 45 at 7th Street via East Broadway to Marshall County Line.                                                     | 5.530           | 14.881             |
| KY 121 - From Calloway County Line via Murray Road and 5th Street to KY 58 at Broadway.                                         | .000            | 10.623             |
| US 45 - From KY 80 at Broadway via North 8th Street to KY 121 at Housman Street.                                                | 17.219          | 17.952             |
| KY 121 - From US 45 (North 8th Street) via Housman Street to Carlisle County Line.                                              | 10.623          | 22.559             |
| (37) Grayson County:                                                                                                            |                 |                    |
| KY 259 - From Edmonson County Line to US 62 westbound.                                                                          | .000            | 12.954             |
| US 62 - From KY 259 southbound to KY 259 northbound.                                                                            | 20.787          | 21.296             |
| KY 259 - From US 62-Eastbound to Breckinridge County Line.                                                                      | 12.954          | 21.459             |
| (38) Green County:                                                                                                              |                 |                    |
| KY 61 - From Adair County Line to US 68.                                                                                        | .000            | 8.194              |
| US 68 - From KY 61 southbound to West Hodgenville Avenue in Greensburg.                                                         | 11.954          | 13.616             |
| KY 61 - From KY 88 north of Greensburg to Larue County Line.                                                                    | 9.796           | 24.344             |
| (39) Greenup County:                                                                                                            |                 |                    |
| KY 8 - From Lewis County Line to KY 8 Spur at South Portsmouth.                                                                 | .000            | 1.956              |
| US 23 - From Boyd County Line to south end of US Grant Bridge.                                                                  | .000            | 28.760             |
| KY 8 - From KY 8 Spur to US 23 at south limits of U.S. Grant Bridge in South Portsmouth.                                        | 1.956           | 3.023              |
| KY 8S - From KY 8 via Carl Perkins Bridge to Ohio State Line.                                                                   | .000            | .610               |
| KY 10 - From Lewis County Line to the second landward pier from river's edge in Ohio.                                           | .000            | 12.844             |
| (40) Hancock County:                                                                                                            |                 |                    |
| US 60 - From Daviess County Line to KY 3199 in Hawesville.                                                                      | .000            | 10.782             |
| KY 3199 - From US 60 in Hawesville to another junction with US 60.                                                              | .000            | 3.301              |
| US 60 - From KY 3199 to Squirrel Tail Hollow Road.                                                                              | 13.666          | 14.270             |
|                                                                                                                                 |                 | [45.220]           |
| KY 3199 - From another junction with US 60 to the Breckinridge County Line.                                                     | 3.301           | 5.558              |
| KY 69 - From US 60 at Hawesville to Indiana State Line.                                                                         | 13.080          | 13.972             |
|                                                                                                                                 | [14.126]        | [15.018]           |
| (41) Hardin County:                                                                                                             |                 |                    |
| US 31WB - From Western Kentucky Parkway to US 31W.                                                                              | .202            | 3.704              |
| US 31W - From US 31W Bypass to Meade County Line.                                                                               | 18.818          | 33.040             |
| US 31W - From Meade County Line to Jefferson County Line.                                                                       | 33.040          | 37.143             |
| KY 61 - From Larue County Line to US 31W.                                                                                       | .000            | 5.309              |
| (42) Harlan County:                                                                                                             |                 |                    |
| US 119 - From Bell County Line along existing and [to] proposed routes [relocation east of Cumberland].                         | .000            | 38.082             |
| <del>US 119 - From a point on the US 119 Mainline near Cumberland] to Letcher County Line.</del>                                | <del>.000</del> | <del>39.182</del>  |
|                                                                                                                                 |                 | [4.100]            |
| US 421 - From Virginia State Line to Leslie County Line.                                                                        | .000            | 27.632             |
| (43) Harrison County:                                                                                                           |                 |                    |
| US 27 - From Bourbon County Line to Pendleton County Line.                                                                      | .000            | 19.472             |
| (44) Henderson County:                                                                                                          |                 |                    |
| US 41 - From Pennyriple Parkway to Indiana State Line (north urban limits of Henderson).                                        | 13.414          | 21.193             |
| <u>US 41A - From Dixon Street to the northern most loop of the interchange with US 41.</u>                                      | <u>13.235</u>   | <u>17.760</u>      |
| US 60 - From Union County Line to <u>US 41A (Dixon Road) [Henderson Bypass].</u>                                                | .000            | <u>10.435</u>      |
|                                                                                                                                 |                 | [8.742]            |
| KY 425 - From US 60 (Morganfield Road) via Henderson Bypass to end of the northbound ramp junction with the Pennyriple Parkway. | .000            | 6.201              |
| (45) Henry County:                                                                                                              |                 |                    |
| KY 55 - From Shelby County Line to KY 22 west in Eminence.                                                                      | .000            | 1.408              |
| KY 22 - From KY 55 south to KY 55 north.                                                                                        | 7.420           | 7.522              |
| KY 55 - From KY 22 east to US 421.                                                                                              | 1.408           | 4.490              |
| US 421 - From Franklin County Line to Shelby County Line at Pleasureville.                                                      | .000            | 6.434              |
| US 421 - From Shelby County Line near Pleasureville to Trimble County Line.                                                     | 6.434           | 25.144             |
| (46) Hickman County:                                                                                                            |                 |                    |
| US 51 - From Fulton County Line to Carlisle County Line.                                                                        | .000            | 14.451             |
| KY 239 - From Fulton County Line to KY 123.                                                                                     | 0.000           | 3.753              |
| KY 123 - From KY 239 to Proposed FAP 94 at Hailwell.                                                                            | 10.048          | 15.788             |
| KY 123 - From Bottery Road in South Columbus to KY 58.                                                                          | 20.882          | 21.787             |
| Proposed FAP 94 - From KY 123 at Hailwell along Cole and Chalk Bluff Roads to KY 123 at South Columbus.                         | .000            | 6.000              |
| <del>[to ??]</del>                                                                                                              | <del>.000</del> | <del>10.095]</del> |
| <u>KY 58 - From KY 123 to KY 80 at Columbus.</u>                                                                                | <u>0.573</u>    | <u>0.761</u>       |
| <u>KY 80 - From KY 58 to KY 123.</u>                                                                                            | <u>0.000</u>    | <u>1.526</u>       |
| <u>KY 123 - From KY 80 to Carlisle County Line.</u>                                                                             | <u>21.787</u>   | <u>22.958</u>      |
| (47) Hopkins County:                                                                                                            |                 |                    |
| KY 281 - From east limits of interchange ramps of Pennyriple Parkway to US 41.                                                  | .000            | .712               |
| US 41A - From US 41 and KY 281 to Webster County Line.                                                                          | .000            | 13.278             |
| (48) Jackson County:                                                                                                            |                 |                    |
| KY 30 - From Laurel County Line to Owsley County Line.                                                                          | .000            | 20.919             |

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| US 421 - From Clay County Line to Rockcastle County Line.                                                                                     | .000    | 29.585      |
| (49) Jefferson County:                                                                                                                        |         |             |
| US 31W - From Hardin County Line via Dixie Highway, Bernheim Lane, 22nd Street, Dumesnil Street and 21st Street <del>[to Main Street]</del> . | .000    | 20.292      |
| US 31W - From 21st Street via Market Street] to US 31 east [3E] at Main and 2nd Streets.                                                      | .000    | 22.135      |
|                                                                                                                                               | [20.292 | 22.135]     |
| US 150 - From Main Street via 21st Street and 22nd Street to I-64.                                                                            | .000    | .741        |
| US 150T - From 22nd Street to 21st Street.                                                                                                    | .000    | .089        |
| US 31 - From US 31E (Main Street) via George Rogers Clark Bridge to 0.02 mile north of 4th Street in Jeffersonville, Indiana.                 | .000    | 1.122       |
| US 31E - From Bullitt County Line to US 31W at Main and 2nd Streets.                                                                          | .000    | 17.987[814] |
| US 42 - From Baxter Avenue to US 60.                                                                                                          | .000    | .805        |
| US 42 - From I-264 to KY 841.                                                                                                                 | 5.779   | 8.951       |
| KY 841 - From US 31W at Dixie Highway via Gene Snyder Freeway to I-65.                                                                        | .000    | 10.250      |
| KY 841 - From I-71 ramps to US 42.                                                                                                            | 34.758  | 37.006      |
| KY 1934 - From KY 1230 (Cane Run Road) to I-264.                                                                                              | .000    | 7.593       |
| US 60 - From US 42 to Story Avenue.                                                                                                           | .000    | .123        |
| (50) Jessamine County:                                                                                                                        |         |             |
| US 27 - From the Garrard County Line to Fayette County Line.                                                                                  | .000    | 15.070      |
| US 68 - From Mercer County Line to Fayette County Line.                                                                                       | .000    | 12.060      |
| (51) Johnson County:                                                                                                                          |         |             |
| US 23 - From Floyd County Line to Lawrence County Line.                                                                                       | .000    | 18.386      |
| US 460 - From Magoffin County Line to US 23 near Paintsville.                                                                                 | .000    | 7.809       |
| KY 321 - From Floyd County Line to US 23 north of Paintsville.                                                                                | .000    | 9.562       |
| KY 40 - From US 460 to KY 321.                                                                                                                | 8.741   | 9.293       |
|                                                                                                                                               | [.000   | 7.700]      |
| (52) Kenton County:                                                                                                                           |         |             |
| KY 8 - From 4th Street to the Campbell County Line.                                                                                           | 6.434   | 7.662       |
| KY 1120 - From I-75 to Campbell County Line.                                                                                                  | .000    | 1.212       |
| (53) Knott County:                                                                                                                            |         |             |
| KY 15 - From Letcher County Line to Perry County Line.                                                                                        | .000    | 9.380       |
| KY 80 - From Perry County Line to Floyd County Line.                                                                                          | .000    | 20.093      |
| (54) Knox County:                                                                                                                             |         |             |
| US 25E - From Bell County Line to Laurel County Line.                                                                                         | .000    | 26.571      |
| KY 90 - From Whitley County Line to 1.621 miles south of US 25E at KY 3041 (Proposed).                                                        | .000    | 2.100       |
| KY 3041 - From 1.621 miles south of US 25E to US 25E.                                                                                         | .000    | 1.621       |
| KY 3085 - From Bell County Line via Old US 25E to junction with US 25E.                                                                       | .000    | 2.140       |
| (55) Larue County:                                                                                                                            |         |             |
| KY 61 - From Green County Line via Hodgenville Bypass to Hardin County Line.                                                                  | .000    | 13.603      |
| US 31E - From KY 61 south via Hodgenville to Nelson County Line.                                                                              | 6.900   | 20.725      |
| (56) Laurel County:                                                                                                                           |         |             |
| US 25E - From Knox County Line in Corbin to west limits of I-75 ramps.                                                                        | .000    | 2.024       |
| US 25 - From Daniel Boone Parkway in London to KY 490.                                                                                        | 13.612  | 16.315      |
| KY 490 - From US 25 to KY 30 at East Bernstadt.                                                                                               | .000    | .877        |
| KY 30 - From KY 490 to Jackson County Line.                                                                                                   | 1.404   | 9.806       |
| KY 80 - From Pulaski County Line to the Daniel Boone Parkway and US 25 near London.                                                           | .000    | 11.083      |
| KY 192 - From west ramps of I-75 to the Daniel Boone Parkway east of London.                                                                  | 18.190  | 22.041      |
| (57) Lawrence County:                                                                                                                         |         |             |
| US 23 - From Johnson County Line to Boyd County Line.                                                                                         | .000    | 28.947      |
| KY 645 - From US 23 to Martin County Line.                                                                                                    | .000    | 5.205       |
| (58) Lee County:                                                                                                                              |         |             |
| KY 11 - From Owsley County Line via Beattyville to Wolfe County Line.                                                                         | .000    | 14.845      |
| (59) Leslie County:                                                                                                                           |         |             |
| US 421 - From Harlan County Line via Main Street in Hyden to KY 118 (Hyden Spur).                                                             | .000    | 22.613      |
| KY 118 - From US 421 in Hyden via Hyden Spur to Daniel Boone Parkway.                                                                         | .000    | 3.524       |
| (60) Letcher County:                                                                                                                          |         |             |
| KY 15 - From US 119 at Whitesburg to KY 7 North at Isom.                                                                                      | .000    | 9.230       |
| KY 7 - From KY 15 to KY 15.                                                                                                                   | 13.497  | 14.157      |
| KY 15 - From KY 7 South in Isom to Knott County Line.                                                                                         | 9.230   | 10.675      |
| US 23 - From Virginia State Line along <u>existing and</u> proposed alignment <del>[to US 119]</del> to Pike County Line.                     | .000    | 7.07[0]0    |
| US 119 - From Harlan County Line to proposed US 23 near Virginia State Line.                                                                  | .000    | 27.798      |
| (61) Lewis County:                                                                                                                            |         |             |
| KY 9 - From Carter County Line to Mason County Line.                                                                                          | .000    | 31.218      |
| KY 8C - From KY 10 to KY 8 south of Quincy.                                                                                                   | .000    | .127        |
| KY 8 - From KY 8C south of Quincy to Greenup County Line.                                                                                     | 28.575  | 36.910      |
| KY 10 - From KY 9 Greenup County Line.                                                                                                        | 6.788   | 19.834      |
| (62) Lincoln County:                                                                                                                          |         |             |

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| US 27 - From Pulaski County Line via Stanford to Garrard County Line.                                                                  | .000              | 21.982            |
| US 127 - From Casey County Line via Hustonville to Boyle County Line.                                                                  | .000              | 10.847            |
| US 150 - From Boyle County Line to US 150 Bypass.                                                                                      | .000              | 4.347             |
| US 150B - From US 150 to US 150.                                                                                                       | .000              | 3.522             |
| US 150 - From US 150/US 150 Bypass near Preacherville Road to Rockcastle County Line.                                                  | 8.705             | 19.665            |
| (63) Livingston County:                                                                                                                |                   |                   |
| US 60 - From McCracken County Line via Smithland, Burna, and Salem to Crittenden County Line.                                          | .000              | 29.059            |
| US 62 - From Marshall County Line via Lake City to Lyon County Line.                                                                   | .000              | 2.854             |
| (64) Logan County:                                                                                                                     |                   |                   |
| US 79 - From Todd County Line via Clarksville Road and 9th Street to US 431 North.                                                     | .000              | 12.135            |
| US 68 - From Todd County Line via Hopkinsville Road, 4th Street and Franklin Street to Warren County Line.                             | .000              | 26.567            |
| US 431 - From Tennessee State Line to Muhlenberg County Line.                                                                          | .000              | 31.898            |
| US 68X - From US 68 west of Auburn via Old US 68 to US 60 east of Auburn.                                                              | .000              | 3.035             |
| KY 3172 - From KY 73 via Old US 68 to Warren County Line.                                                                              | .000              | 2.515             |
| (65) Lyon County:                                                                                                                      |                   |                   |
| US 62 - From Livingston County Line to US 641 at Fairview.                                                                             | .000              | 10.465            |
| US 641 - From US 62 at Fairview to Caldwell County Line.                                                                               | .000              | 5.715             |
| (66) McCracken County:                                                                                                                 |                   |                   |
| US 45 - From Graves County Line via Lone Oak Road and Jackson Street to US 60 East (Jackson Street).                                   | .000              | 10.820            |
| US 60 - From Ballard County Line via Hinkleville Road and Park Avenue to US 45 (28th Street) at Laclede.                               | .000              | 13.544            |
| US 60 - From US 45 (28th Street) via Jackson Street, 21st Street, Beltline Highway, and Division Street to the Livingston County Line. | 13.544            | 20.028            |
| US 62 - From US 60 to US 68.                                                                                                           | 12.881            | 15.513            |
| US 68 - From US 62 to Marshall County Line.                                                                                            | .000              | 2.677             |
| (67) McCreary County:                                                                                                                  |                   |                   |
| US 27 - From Tennessee State Line to Pulaski County Line.                                                                              | .000              | 22.252            |
| KY 90 - From US 27 to Whitley County Line.                                                                                             | .000              | 11.920            |
| (68) McLean County:                                                                                                                    |                   |                   |
| US 431 - From Muhlenberg County Line to Daviess County Line.                                                                           | .000              | 11.573            |
| (69) Madison County:                                                                                                                   |                   |                   |
| KY 1295 - From Garrard County Line to KY 52.                                                                                           | .000              | 4.529             |
| KY 52 - From KY 1295 via Lancaster Avenue to KY 876.                                                                                   | 5.444             | 10.910            |
| KY 954 - From Garrard County Line to KY 21.                                                                                            | .000              | .139              |
| KY 21 - From KY 954 via Lancaster Road and Chestnut Street in Berea to US 25 at Mt. Vernon Road.                                       | 6.176             | 9.115             |
| US 25 - From KY 21 West via Chestnut Street in Berea to KY 21 East.                                                                    | 2.863             | 3.810             |
| KY 21 - From US 25 at Estill Street via Prospect Street and Big Hill Road in Berea to US 421.                                          | 9.115             | 14.196            |
| KY 876 - From west limits of I-75 interchange in Richmond to KY 52 (Irvine Road).                                                      | 7.097             | 10.755            |
| US 25 - From US 421 via Big Hill Avenue to KY 876.                                                                                     | 11.960            | 15.500            |
| US 421 - From US 25 to Rockcastle County Line.                                                                                         | .000              | 13.031            |
| US 421S - From KY 52 (Irvine Road) to north urban limits of Richmond at US 25.                                                         | .000              | 3.900             |
| US 25 - From proposed Richmond Bypass to northwest limits of I-75 interchange at Richmond.                                             | 19.188            | 20.158            |
| KY 627 - From US 25 west of I-75 to Clark County Line.                                                                                 | .000              | 6.118             |
| (70) Magoffin County:                                                                                                                  |                   |                   |
| <del>US 460 - From Mountain Parkway to KY 114.</del>                                                                                   | <del>12.546</del> | <del>14.635</del> |
| KY 114 - From US 460 to Floyd County Line.                                                                                             | .000              | 5.026             |
| US 460 - From Morgan County Line to <del>Mountain Parkway West.</del>                                                                  | <del>.000</del>   | <del>12.546</del> |
| US 460 - From KY 114 to Johnson County Line.                                                                                           | .000              | 20.426            |
|                                                                                                                                        | <del>14.635</del> | <del>20.426</del> |
| (71) Marion County:                                                                                                                    |                   |                   |
| US 68 - From Taylor County Line to KY 55 (Walnut St.).                                                                                 | .000              | 10.690            |
| KY 55 - From US 68 (Main Street) via Walnut Street to KY 49 (St. Marys Road).                                                          | .000              | .389              |
| KY 49 - From KY 55 (St. Marys Road) via Walnut Street to KY 49 (Proctor Knott Avenue).                                                 | 17.815            | 17.968            |
| KY 55 - From KY 55 (Proctor Knott Avenue) via Walnut and Spalding Avenue to Washington County Line.                                    | .389              | 4.669             |
| (72) Marshall County:                                                                                                                  |                   |                   |
| KY 58 - From Graves County Line to KY 80.                                                                                              | .000              | 2.156             |
| KY 80 - From KY 58 to US 68.                                                                                                           | .000              | 16.926            |
| US 68 - From McCracken County Line to Trigg County Line.                                                                               | .000              | 28.085            |
| US 641 - From Calloway County Line to US 62.                                                                                           | .000              | 19.422            |
| US 62 - From I-24 to Livingston County Line.                                                                                           | 8.805             | 12.081            |
| US 641S - From US 641 to Purchase Parkway.                                                                                             | .000              | 3.519             |
| KY 348 - From Purchase Parkway to US 641.                                                                                              | 7.448             | 8.325             |
| (73) Martin County:                                                                                                                    |                   |                   |
| KY 645 - From KY 40 at a point west of Inez Bypass to KY 3 northbound south of Inez.                                                   | 4.682             | 6.605             |

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|--------------------------------------------------------------------------------------------------------------------------------------|---------|----------|
| KY 3 - From KY 645 westbound via Inez Bypass to KY 645 eastbound.                                                                    | 9.709   | 10.019   |
| KY 645 - From KY 3 southbound via Inez Bypass to KY 40 southeast of Inez.                                                            | 6.605   | 7.632    |
| KY 40 - From KY 645 southeast of Inez to West Virginia State Line.                                                                   | 11.900  | 20.280   |
| KY 645 - From Lawrence County Line to KY 40 at a point west of Inez.                                                                 | .000    | 4.682    |
| (74) Mason County:                                                                                                                   |         |          |
| KY 11 - From Fleming County Line to KY 9.                                                                                            | .000    | 8.452    |
| US 68 - From Fleming County Line to US 62 in Washington.                                                                             | .000    | 11.854   |
| US 62 - From US 68 in Washington via Lexington Road, Forest Avenue, and Aberdeen Bridge to Ohio State Line.                          | 12.672  | 18.000   |
| KY 9 - From Lewis County Line to Bracken County Line.                                                                                | .000    | 19.554   |
| KY 546S - From KY 9 to Ohio State Line via proposed New Bridge.                                                                      | .000    | 4.600    |
| (75) Meade County:                                                                                                                   |         |          |
| US 31W - From Hardin County Line to Hardin County Line.                                                                              | .000    | 3.827    |
| US 60 - From Breckinridge County Line to US 31W.                                                                                     | .000    | 15.644   |
| KY 144 - From US 60 to KY 448 near Buck Grove.                                                                                       | 25.390  | 28.665   |
| KY 448 - From KY 144 to KY 1051 (Brandenburg Bypass).                                                                                | .000    | 4.392    |
| KY 1051 - From KY 448 via Brandenburg Bypass to KY 79.                                                                               | .000    | 2.218    |
| KY 79 - From KY 1051 via Brandenburg Bypass to Indiana State Line.                                                                   | 8.237   | 9.912    |
| (76) Menifee County:                                                                                                                 |         |          |
| US 460 - From Montgomery County Line to Morgan County Line.                                                                          | .000    | 19.750   |
| (77) Mercer County:                                                                                                                  |         |          |
| US 127 - From Boyle County Line via Danville Road to US 68.                                                                          | .000    | 4.402    |
| US 68 - From US 127 at Mooreland Avenue to Jessamine County Line.                                                                    | 6.752   | 20.104   |
| US 127 - From US 68 to Anderson County Line.                                                                                         | 4.402   | 17.150   |
| (78) Metcalfe County:                                                                                                                |         |          |
| KY 90 - From Barren County Line to Cumberland County Line.                                                                           | .000    | 11.719   |
| (79) Montgomery County:                                                                                                              |         |          |
| US 460 - From Bourbon County Line to KY 686 (Mount Sterling Bypass).                                                                 | .000    | 8.281[9] |
| KY 686 - From US 460 (Maysville Road) via Mount Sterling Bypass to US 460 (Frenchburg Road) at south urban limits of Mount Sterling. | .000    | 3.460    |
| US 460 - From south urban limits of Mount Sterling to Menifee County Line.                                                           | 10.702  | 22.151   |
| (80) Morgan County:                                                                                                                  |         |          |
| KY 7 - From US 460 in West Liberty to Elliot County Line.                                                                            | .000    | 11.683   |
| KY 203 - From Wolfe County Line to US 460.                                                                                           | .000    | 3.761    |
| US 460 - From Menifee County Line via West Liberty to Magoffin County Line.                                                          | .000    | 28.634   |
| (81) Muhlenberg County:                                                                                                              |         |          |
| US 431 - From Logan County Line to McLean County Line.                                                                               | .000    | 27.779   |
| (82) Nelson County:                                                                                                                  |         |          |
| US 31E - From Larue County Line via New Haven Road, Cathedral Street, and Stephen Foster Avenue to Spencer County Line.              | .000    | 27.588   |
| US 62 - From US 31E to US 150.                                                                                                       | 14.294  | 14.653   |
| US 150 - From US 62 to Washington County Line.                                                                                       | .000    | 7.682    |
| (83) Nicholas County:                                                                                                                |         |          |
| US 68 - From Bourbon County Line to Robertson County Line.                                                                           | .000    | 12.211   |
| (84) Owen County:                                                                                                                    |         |          |
| US 127 - From Franklin County Line to KY 35 at Bromley.                                                                              | .000    | 24.687   |
| KY 35 - From US 127 to Gallatin County Line.                                                                                         | .000    | 4.132    |
| (85) Owsley County:                                                                                                                  |         |          |
| KY 30 - From Jackson County Line to KY 11-North.                                                                                     | .000    | 11.206   |
| KY 11 - From KY 30 to Lee County Line.                                                                                               | 14.227  | 17.307   |
| (86) Pendleton County:                                                                                                               |         |          |
| US 27 - From Harrison County Line to Campbell County Line.                                                                           | .000    | 19.422   |
| KY 9 - From Bracken County Line to Campbell County Line.                                                                             | .000    | 4.339    |
| (87) Perry County:                                                                                                                   |         |          |
| KY 15 - From Knott County Line at Vicco to Breathitt County Line.                                                                    | .000    | 25.179   |
| KY 80 - From KY 15 to Knott County Line.                                                                                             | 7.910   | 15.862   |
| (88) Pike County:                                                                                                                    |         |          |
| US 23 - From Letcher County Line along proposed and existing alignments to [four lane east of Dorton].                               | .000    | 4.200    |
| US 23 - From KY 610 at Dorton via Pikeville to Floyd County Line.                                                                    | .000    | 35.123   |
|                                                                                                                                      | [6.580] | [35.123] |
| US 119 - From US 23 north of Pikeville to West Virginia State Line.                                                                  | .000    | 29.748   |
| US 460 - From US 23 north of Shelbiana to Virginia State Line.                                                                       | .000    | 24.865   |
|                                                                                                                                      |         | [25.445] |
| (89) Powell County:                                                                                                                  |         |          |
| KY 11 - From Wolfe County Line to Mountain Parkway.                                                                                  | .000    | 3.504    |
| (90) Pulaski County:                                                                                                                 |         |          |
| US 27 - From McCreary County Line to Lincoln County Line.                                                                            | .000    | 30.693   |

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|---------------------------------------------------------------------------------------------------------------------|----------|------------|
| KY 80B - From US 27 to KY 80.                                                                                       | .000     | 2.315      |
| KY 80 - From KY 80 Bypass to Laurel County Line.                                                                    | 21.636   | 40.393     |
| KY 90 - From Wayne County Line to US 27.                                                                            | .000     | 4.169      |
| KY 461 - From KY 80 to Rockcastle County Line.                                                                      | .000     | 8.441      |
| (91) Robertson County:                                                                                              |          |            |
| US 68 - From Nicholas County Line to Fleming County Line.                                                           | .000     | 1.357      |
| (92) Rockcastle County:                                                                                             |          |            |
| US 150 - From Lincoln County Line to US 25 in Mount Vernon.                                                         | .000     | 10.511     |
| US 25 - From I-75 to US 150.                                                                                        | 11.764   | 13.882     |
| US 421 - From Jackson County Line to Madison County Line.                                                           | .000     | .601       |
| KY 461 - From Pulaski County Line to US 25.                                                                         | .000     | 9.404      |
| US 25 - From KY 461 to I-75.                                                                                        | 15.018   | 15.678     |
| (93) Rowan County:                                                                                                  |          |            |
| KY 32 - From Fleming County Line to south limits of I-64 interchange.                                               | .000     | 5.784      |
| (94) Russell County:                                                                                                |          |            |
| US 127 - From Clinton County Line to Casey County Line.                                                             | .000     | 26.998     |
| (95) Scott County:                                                                                                  |          |            |
| US 460 - From Franklin County Line to proposed Georgetown Bypass near Great Crossings.                              | .000     | 7.100      |
| Proposed Georgetown Bypass - From US 460 Mainline near Great Crossings to US 25.                                    | .000     | 3.400      |
| US 460B - From US 25 via US 460 (Georgetown Bypass) to US 62/US 460.                                                | .000     | 2.891      |
| US 460 - From US 62/US 460B to Bourbon County Line.                                                                 | 8.583    | 15.421     |
| (96) Shelby County:                                                                                                 |          |            |
| KY 55 - From I-64 [to southwest urban limits of Shelbyville] via Taylorsville Road to US 60                         | 6.246    | 7.898      |
| KY 55 - From KY 43/KY 2268 to Henry County Line.                                                                    | 9.131    | 17.850     |
| [and Boone Station Road to Henry County Line.                                                                       | 6.246    | 17.850]    |
| US 60 - From KY 55 South (Taylorsville Road) via Midland Trail and Main Street to KY 55 North (Boone Station Road). | 8.589    | 11.398     |
| KY 2268 - From southend of Clear Creek Bridge via 7th Street and Pleasureville Road to KY 55.                       | 0.000    | 1.308      |
| KY 53 - From I-64 to US 60 (Frankfort Road) via Mt Eden Road.                                                       | 6.188[9] | 7.978      |
| US 421 - From Henry County Line to Henry County Line.                                                               | .000     | .661       |
| (97) Simpson County:                                                                                                |          |            |
| US 31W - From south limits of I-65 Interchange to KY 100.                                                           | 2.300    | 6.252[488] |
| KY 100 - From US 31W Mainline to the I-65 ramps east of I-65.                                                       | 9.675    | 12.875     |
| (98) Spencer County:                                                                                                |          |            |
| US 31E - From Nelson County Line to Bullitt County Line.                                                            | .000     | 2.433      |
| (99) Taylor County:                                                                                                 |          |            |
| KY 55 - From Adair County Line to US 68 (Broadway).                                                                 | .000     | 10.293     |
| US 68 - From KY 55 via Broadway to Marion County Line.                                                              | 4.939    | 13.600     |
| (100) Todd County:                                                                                                  |          |            |
| US 41 - From Tennessee State Line to Christian County Line.                                                         | .000     | 12.458     |
| US 79 - From Tennessee State Line to Logan County Line.                                                             | .000     | 10.606     |
| US 68 - From Christian County Line to Logan County Line.                                                            | .000     | 14.060     |
| (101) Trigg County:                                                                                                 |          |            |
| US 68 - From Marshall County Line to Christian County Line.                                                         | .000     | 28.115     |
| US 68X - From US 68 west of Cadiz to US 68 east of Cadiz.                                                           | 0.000    | 4.519      |
| KY 3468 - From US 68 east of Cadiz via Old US 68 to US 68 west of I-24.                                             | 0.000    | 2.840      |
|                                                                                                                     |          | [28.224]   |
| (102) Trimble County:                                                                                               |          |            |
| US 421 - From Henry County Line to US 42 South.                                                                     | .000     | 6.704      |
| US 42 - From US 421 South in Bedford to US 421 North in Bedford.                                                    | 8.078    | 8.249      |
| US 421 - From US 42 North to Indiana State Line.                                                                    | 6.704    | 19.287     |
| (103) Union County:                                                                                                 |          |            |
| KY 56 - From Illinois State Line to proposed Morganfield Bypass.                                                    | .000     | 11.600     |
| KY 56 - From existing US 56 via proposed Bypass to US 60.                                                           | .000     | 1.400      |
| US 60 - From Crittenden County Line to proposed Morganfield Bypass.                                                 | .000     | 15.500     |
| US 60 - From existing US 60 via proposed Bypass to US 60 east of Morganfield.                                       | .000     | 2.900      |
| US 60 - From proposed Bypass east of Morganfield to Henderson County Line.                                          | 18.100   | 26.069     |
| KY 109 - From Webster County Line to US 60.                                                                         | .000     | 1.536      |
| (104) Warren County:                                                                                                |          |            |
| KY 101 - From I-65 to US 31W.                                                                                       | 7.861    | 11.641     |
| US 31W - From KY 101 south to KY 101 north.                                                                         | 27.869   | 28.557     |
| KY 101 - From US 31W to Edmonson County Line.                                                                       | 11.641   | 12.850     |
| US 68 - From Logan County Line to US 31W.                                                                           | .000     | 13.060     |
| US 31W - From US 68 to KY 446 Overpass.                                                                             | 14.670   | 17.569     |
| KY 446 - From US 31W to I-65.                                                                                       | .000     | 1.090      |
| KY 880 - From KY 185 to US 68.                                                                                      | .000     | 5.128      |
| KY 185 - From KY 880 to US 68.                                                                                      | .000     | .292       |

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|---------------------------------------------------------------------|-------------|--------------|
| US 231 - From Allen County Line to I-65.                            | .000        | 9.106        |
| <u>KY 3172 - From Logan County Line via Old US 68 to KY 240.</u>    | <u>.000</u> | <u>0.300</u> |
| (105) Washington County:                                            |             |              |
| KY 55 - From Marion County Line to US 150.                          | .000        | 4.551        |
| KY 555 - From US 150 to north end of Bluegrass Parkway Interchange. | .000        | 14.738       |
| US 150 - From Nelson County Line to Boyle County Line.              | .000        | 21.359       |
| (106) Wayne County:                                                 |             |              |
| KY 90 - From Clinton County Line to Pulaski County Line.            | .000        | 25.235       |
| (107) Webster County:                                               |             |              |
| US 41A - From Hopkins County Line to KY 670.                        | .000        | 1.324        |
| KY 670 - From US 41A to KY 109.                                     | .000        | 2.712        |
| KY 109 - From KY 670 to Union County Line.                          | 2.876       | 14.664       |
| (108) Whitley County:                                               |             |              |
| KY 90 - From McCreary County Line to US 25W.                        | .000        | 8.328        |
| US 25W - From KY 90 to east limits of I-75 ramps.                   | 22.183      | 29.677       |
| KY 90 - From US 25W along proposed alignment to Knox County Line.   | .000        | 2.000        |
| (109) Wolfe County:                                                 |             |              |
| KY 15 - From Breathitt County Line to KY 191.                       | .000        | 9.515        |
| KY 15S - From KY 15 to <u>westbound land of</u> Mountain Parkway.   | .000        | 1.054        |
| KY 11 - From Lee County Line to Powell County Line.                 | .000        | 5.317        |
| KY 191 - From KY 15 Spur to KY 203.                                 | .000        | 10.342       |
| KY 203 - From KY 191 to Morgan County Line.                         | .000        | 1.323        |
| (110) Woodford County:                                              |             |              |
| US 60 - From Franklin County Line to Fayette County Line.           | .000        | 13.039       |

Section 12. No Encroachment Permits for Vegetation Control. An encroachment permit shall not be issued pursuant to the provisions of 603 KAR 5:150 for the clearing or trimming of any vegetation on state-owned right-of-way which is in front of an outdoor advertising device.

Section 13. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "The Bonus Agreement" between the Kentucky Department of Highways and the Federal Highway Administration, executed December 23, 1971; and

(b) "Application for an Advertising Device Permit," Form TC 99-31, March 1997 [~~December 1995~~] edition;

(c) "Measurement of Commercially or Industrially Developed Area," a Transportation Cabinet document effective March 1997.

(2) Material incorporated by reference as a part of this administrative regulation may be viewed, copied, or obtained from the Transportation Cabinet, Permits Branch, 11th Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622. The telephone number is (502) 564-4105. The business hours are 8 a.m. to 4:30 p.m. eastern time on weekdays.

J.M. YOWELL, P.E., State Highway Engineer  
JAMES C. CODELL, III, Secretary

APPROVED BY AGENCY: May 13, 1997

FILED WITH LRC: May 20, 1997 at 11 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on July 21, 1997 at 2 p.m. local prevailing time in the Transportation Cabinet, Corner of High, Clinton and Holmes Streets, Training Rooms A & B, First Floor, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by July 14, 1997 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by July 14, 1997. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative

regulation. Written comments will be accepted until the close of business on July 21, 1997. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra Pullen Davis, Staff Assistant, Transportation Cabinet, 1003 State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-4890, Fax: (502) 564-4809.

## REGULATORY IMPACT ANALYSIS

Contact person: Sandra Pullen Davis

(1) Type and number of entities affected: All owners of outdoor advertising devices in Kentucky.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: We don't anticipate that the changes proposed in this administrative regulation will cause any change in the cost of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: We don't anticipate that the changes proposed in this administrative regulation will cause any change in the cost of living or employment.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: It will be easier for persons wanting a changeable message board to comply with the looser standards in this administrative regulation change. However, with the Congressional approval of the National Highway System additional roads have been added to the list of protected highways as required by 23 USC 131. Many of the billboards located within these areas will be reclassified as "nonconforming" allowing only routine maintenance to be performed on those billboards. The billboards will be allowed to continue in existence but not be rebuilt at the end of their useful lives.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None as a result of the changes to this administrative regulation.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: The Transportation Cabinet will have to review all requests for billboard permits. In addition, the cabinet will have to perform a survey of all of the newly protected roads to identify the billboards which will now be classified as "nonconforming".

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State Road Fund as authorized in the Transportation Cabinet budget.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Will be implemented state-wide. See below.

(b) Kentucky: The decision to continue not allowing trees on state right of way which are growing in front of billboards according to persons who advertise on or own billboards and who testified at or submitted comments to the public comment hearing will have a detrimental economic impact on their businesses. They testified that a certain percentage of their businesses can be directly attributed to billboard advertisements. If the growth on state right of way hides the advertisement, that portion of the business will be lost. However, others pointed out that there are very few billboards with growth that hides even a portion of the advertisement.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The Transportation Cabinet considered whether permits should be issued to allow trees or other vegetation on state right of way to be cut if the vegetation is blocking a billboard or other advertising device. This alternative was denied because of the strong outpouring of public sentiment against the tree-trimming. The Transportation Cabinet was required because of a change in federal law to extend the areas of protection to all segments of the National Highway System. Because of two recent court cases, the Transportation Cabinet was required to amend the administrative regulation as it relates to changeable message boards and commercially and industrially developed areas.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Since many of the participants at the public comment hearing considered cutting trees in front of billboards to be an environmental issue, not changing the policy of "no tree cutting" will benefit the environment.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Unlikely to be detrimental - just no longer receive the benefits.

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: Since the Bonus Agreement with the Federal Highway Administration governs much of what Kentucky can or cannot do regarding outdoor advertising devices, the Transportation Cabinet has incorporated it by reference as a part of this administrative regulation.

(11) TIERING: Is tiering applied? Yes. Tiering is applied since there are less stringent standards for the placement of billboards adjacent to FAP highways when compared to the interstate and parkway highways. In addition, there are less stringent standards for on-premise signs when compared to off-premise signs.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 23 USC 131, 23 CFR Part 750 and the Bonus Agreement executed

by the Federal Highway Administration and the Kentucky Department of Highways. In addition, 23 USC 131 establishes the prohibition against erecting new billboards on scenic highway.

2. State compliance standards. Outdoor advertising devices are controlled on the interstate highways, parkways, national highway system, and federal aid primary highways. Interstates and parkways are treated the same with more control imposed on those highways. No new billboards are allowed to be constructed on highways which are FAP, interstate, or parkway which are also designated as scenic.

3. Minimum or uniform standards contained in the federal mandate. Outdoor advertising devices are mandated to be controlled on the interstate highways, parkways, national highway system, and federal aid primary highways. The parkways are required to be treated as interstate highways for billboard control. Scenic highways which are FAP, interstate, or parkways shall not have new billboards erected along them.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is more than one federal mandate operating here. The basic mandate is the federal Highway Beautification Act governed by 23 CFR Part 750. However, Kentucky is one of the states which voluntarily agreed in 1961 to stricter controls on outdoor advertising devices within 660 feet of interstate and parkway highways. Kentucky received over \$2.5 million in bonus payments since entering into the Bonus Agreement with FHWA. Violation of the agreement would cause those funds plus others spent in removing billboards to be repaid to the federal government. In addition, Kentucky has not allowed the less stringent controls in "Cotton Areas". This would require an act of the General Assembly as well as requiring the Commonwealth to pay back much federal money received under the bonus agreement.

#### **EDUCATION, ARTS, AND HUMANITIES CABINET**

**Kentucky Board of Education  
Department of Education  
Office of District Support Services  
(Amendment)**

#### **702 KAR 7:065. Designation of agent to manage high school interscholastic athletics.**

RELATES TO: KRS 156.070

STATUTORY AUTHORITY: KRS 156.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 gives the Kentucky Board of Education (KBE) the management and control of the common schools, including interscholastic athletics, and allows the KBE to designate an agency to manage athletics pursuant to rules approved by the KBE. This administrative regulation designates an agent for high school athletics and sets forth financial planning and review processes for that agent. Also, this administrative regulation adopts the bylaws, procedures and rules of that agent.

Section 1. The Kentucky High School Athletic Association (KHSAA) is hereby designated as the Kentucky Board of Education's agent to manage interscholastic athletics at the high school level in the common schools, including any private schools desiring to associate with KHSAA and to compete with the common schools.

Section 2. The KHSAA shall meet the following conditions in order to remain eligible to maintain the designation as the agent to manage interscholastic athletics:

(1) Accept four (4) at-large members appointed by the Kentucky Board of Education to its governing body;

(2) Sponsor an annual meeting of its member schools;

(3) Provide for each member school to have a vote on constitution and bylaw changes submitted for consideration at the annual meeting;

(4) Provide for regional postseason tournament net revenues to be distributed to the member schools in that region participating in that sport, utilizing a share approach determined by the schools within that region playing that sport;

(5) The governing body shall set goals and objectives and perform a self-assessment and submit them annually to the KBE.

(6) Advise the Department of Education of all legal action brought against the KHSAA;

(7) Permit Board of Control members to serve a maximum of two (2) four (4) year terms with no region represented for more than eight (8) years;

(8) Employ the commissioner and evaluate that person's performance annually and establish all staff positions upon recommendation of the commissioner;

(9) Permit the commissioner to employ all other personnel deemed necessary to perform the staff responsibilities;

(10) Permit the Board of Control to assess fines on member schools;

(11) Utilize trained independent hearing officers instead of eligibility committees for appeals; and

(12) Establish a philosophical statement of principles to use as a guide in eligibility cases.

Section 3. Financial Planning and Review Requirements. (1) KHSAA shall submit the following financial documents to the KBE:

(a) Draft budget for the next two (2) years in November of each year;

(b) Annual audit with KHSAA Commissioner's letter addressing any exceptions within thirty (30) days of receipt of the audit; and

(c) Midyear and end-of-year budget status reports by July 30 and January 30, respectively.

(2) KHSAA shall submit a strategic plan to KBE by June 1 of each year.

(3) KHSAA shall submit a midyear and annual report by July 30 and January 30, respectively.

(4) KHSAA shall complete an annual review of its bylaws by October 30 of each year, including the following:

(a) Athletic appeals;

(b) Eligibility rules;

(c) Duties of school officials;

(d) Contests; and

(e) Requirements for officials and coaches.

(5) KHSAA shall submit to KBE a report of all athletic appeals and their disposition by September 1 of each year. The annual report on appeals shall include the name of individual(s), grade, school, and the action taken by KHSAA.

Section 4. The bylaws, tournament rules, due process procedures, and officials' rules of the KHSAA Handbook, 1997-98 [~~1996-97~~] as [~~revised, adopted, and~~] approved on June 11, 1997 [~~1996~~], are hereby incorporated by reference. This material may be inspected and copied at the Office of Legal Services, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Monday through Friday, 8 a.m. through 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

Wilmer S. Cody, Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: June 12, 1997

FILED WITH LRC: June 12, 1997 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 25, 1997, at 10 a.m., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 18, 1997, five work days prior to the hearing, of their intent to attend. If the required notification of intent to attend the hearing is not received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, Associate Commissioner, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Randy Kimbrough

(1) Type and number of entities affected: 176 school districts.

(2) Direct and indirect costs or savings to those affected: None

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: None

(6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; methods why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would occur, explain detrimental effect: This regulation does not relate to the environment or public health.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: None

(a) Necessity of proposed regulation, if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) Tiering: Was tiering applied? No. Tiering was not appropriate

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in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

### EDUCATION, ARTS, AND HUMANITIES CABINET Education Professional Standards Board (Amendment)

#### 704 KAR 20:165. Qualifications for professional school positions.

RELATES TO: KRS 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 requires appropriate certification for professional education position in Kentucky public schools; however, professional education positions are established in the local school districts for which a corresponding certification is not issued. In this administrative regulation the Education Professional Standards Board establishes qualifications for these assignments.

Section 1. School Business Administrator. The qualifications for the position of school business administrator shall be one (1) of the following:

- (1) Kentucky certification for school superintendent;
- (2) A bachelor's or advanced degree in business; or
- (3) Valid Kentucky certification for school business administrator issued prior to September 1, 1994.

Section 2. Director of Districtwide Services. A director of districtwide services may qualify for this position on the basis of certification either as a school superintendent, supervisor of instruction, school business administrator, or principal. This administrative regulation does not apply to any position for which a specific certificate is available, such as director of pupil personnel.

Section 3. Director of Federally Supported Programs. A director of federally supported programs may qualify for this position on the basis of certification either as a school superintendent, supervisor of instruction, or school principal.

Section 4. Consultant. A consultant in elementary education, special education, or in an academic subject field may qualify for the position on the basis of the following:

- (1) Master's degree or nondegree fifth-year program;
- (2) Certification in the appropriate subject field or service area; and
- (3) Three (3) years of teaching experience in the appropriate subject field or service area.

Section 5. Reading Program Consultant. A reading program consultant may qualify for the position on the basis of certification as a reading specialist.

Section 6. Gifted Education Coordinator. A gifted education coordinator may qualify for the position on the basis of the following:

- (1) A master's degree or nondegree fifth-year program;
- (2) A certificate endorsement for teacher of gifted education; and
- (3) Three (3) years of teaching experience.

Section 7. Special Education Work Study Program Coordinator. A special education work study program coordinator may qualify for the position on the basis of certification as a teacher of exceptional children.

Section 8. Professional Development Coordinator. The professional development coordinator may qualify for the position on the basis

of certification as a principal or supervisor of instruction.

Section 9. Instructional Television Coordinator. An instructional television coordinator may qualify for the position on the basis of certification for classroom teaching.

Section 10. Instructional Coordinator. The instructional coordinator may qualify for the position on the basis of certification for supervisor of instruction or school principal at the appropriate level.

Section 11. School Health Coordinator. A school health coordinator may qualify for the position on the basis of certification for classroom teaching or certification for school nurse.

Section 12. Chapter I Remedial Mathematics. Teachers holding a valid early elementary certificate, grades K-4, may qualify for teaching mathematics in Chapter I programs in grades 5-8.

Section 13. Teachers for Alternative Schools. A classroom teacher in an alternative school may qualify on the basis of any certificate valid for classroom teaching.

Section 14. Instructional Technology Director. An instructional technology director may qualify on the basis of any certificate valid for classroom teaching.

Section 15. Federal Grant Coordinator - School Level. A federal grant coordinator at the school level may qualify on the basis of any certificate valid for classroom teaching.

Section 16. Job Training Partnership Act Teacher. A teacher in the JTPA Program may qualify on the basis of any certificate valid for classroom teaching.

Section 17. Family Resource Center Director. A family resource center director may qualify on the basis of any valid certificate issued by the Educational Professional Standards Board if the position is reported as certified.

Section 18. Migrant Advocate. A migrant advocate may qualify on the basis of any certificate valid for classroom teaching.

Section 19. Home and Hospital Teacher. A home and hospital teacher may qualify on the basis of any certificate valid for classroom teaching.

Section 20. Dean of Students. A dean of students may qualify on the basis of an instructional leadership certificate - school principal.

Section 21. Testing Coordinator. A testing coordinator may qualify on the basis of an individual intellectual assessment certificate, psychometrist certificate, supervisor certificate, or guidance certificate.

ROSA WEAVER, Chair

APPROVED BY AGENCY: May 12, 1997

FILED WITH LRC: May 22, 1997 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative will be held on July 21, 1997, at 10 a.m. in the First Floor Conference Room, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 14, 1997, five work days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulations. If you do not wish to be heard at the public hearing, may submit written comments on the proposed administrative regulation. Send written notification of

intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact person: Dr. Betty Lindsey, Office of Teacher Education and Certification, 1024 Capital Center Drive, Frankfort, Kentucky 40601, Telephone: (502) 573-4606, Fax: (502) 573-1610.

# REGULATORY IMPACT ANALYSIS

Contact Person: Ronda Tamme

(1) Type and number of entities affected: All applicants for the certification for professional school positions.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: None

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on promulgating administrative body:

(a) Direct and indirect costs or savings: No additional costs.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The Education Professional Standards Board will disseminate information pertaining to the qualifications for professional school positions to local school districts.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State General Fund.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented:

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The Education Professional Standards Board can establish teacher certification standards only by administrative regulation.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical areas in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. Certificate requirements are applied uniformly to all applicants.

## EDUCATION, ARTS, AND HUMANITIES CABINET Education Professional Standards Board (Amendment)

### 704 KAR 20:710. Professional certificate for instructional leadership - school principal, all grades.

RELATES TO: KRS 161.020, 161.027, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.027, 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020

requires that a teacher and other professional school personnel hold a certificate of legal qualification for the respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board. Additionally, KRS 161.027 specifically requires a preparation program for principals. A teacher education institution shall be approved for offering the preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board. This administrative regulation establishes the preparation and certification program for school principals, at all grade levels. This administrative regulation is not required by federal law.

Section 1. Conditions and Prerequisites. (1) The provisional and professional certificate for instructional leadership - school principal shall be issued to an applicant who has completed an approved program of preparation and requirements, including assessments.

(2) The provisional and professional certificate for instructional leadership - school principal shall be valid for the position of school principal or school assistant principal for all grade levels.

(3) Prerequisites for admission to the program of preparation for the provisional and professional certificate for instructional leadership - school principal shall include:

(a) Qualification for a Kentucky classroom teaching certificate;

(b) A 2.5 grade point average on a 4.0 scale on all collegiate preparation;

(c) Successful completion of a generic test of communication skills, general knowledge, and professional education concepts approved by the Education Professional Standards Board as a condition for the issuance of a Kentucky classroom teaching certificate or other test authorized for this purpose by the appropriate state agency recognized by the Education Professional Standards Board through contract with Interstate Agreement on Qualification of Educational Personnel; and

(d) Successful completion of the Kentucky Teacher Internship Program, as provided in 704 KAR 20:045, or two (2) years of successful teaching experience outside the state of Kentucky.

Section 2. Kentucky Administrator Standards for Preparation and Certification. The approved program of preparation for the provisional certificate for instructional leadership - school principal shall include a master's degree in education and shall be designed to address recommendations of relevant professional organizations including the National Policy Board for Educational Administration, the University Council for Educational Administration, the National Council of Professors of Educational Administration, the National Association of Secondary School Principals, and the American Association of School Administrators and to prepare a candidate for the position of School Principal as specified in the following Administrator Standards adopted by the Education Professional Standards Board:

(1) Administrator standard I. The administrator is the instructional leader who guides, facilitates, and supports the curriculum, instruction, and assessment;

(2) Administrator standard II. The administrator practices positive, promotional, and proactive communication strategies (oral and written) for effective parent, community, school involvement to improve the learning environment for all students; and

(3) Administrator standard III. The administrator is the organiza-

tional leader and manager who acts within legal and ethical guidelines to accomplish educational purposes.

Section 3. Assessment Prerequisites for the Provisional Certificate for Instructional Leadership - School Principal. (1) An applicant for certification as a school principal, including vocational principal, shall attain the specified minimum score on each of the following assessments prior to receiving the provisional certificate, except as provided by KRS 161.027(6):

(a) Kentucky Specialty Test of Instructional and Administrative Practices, with a score of eighty-five (85) percent correct responses; and

(b) The written test of applied knowledge approved by the Education Professional Standards Board.

(2) For an applicant applying for a certificate under KRS 161.027(6)(b), the school superintendent of the employing district shall submit a request that shall include an affirmation that the applicant pool consisted of three (3) or less applicants who met the requirements for selecting a principal.

Section 4. Statement of Eligibility for Internship. A statement of eligibility for internship for the provisional certificate for instructional leadership - school principal shall be issued for a five (5) year period to an applicant who:

(1) Has successfully completed an approved program of preparation;

(2) Has three (3) years of full-time teaching experience; and

(3) Has successfully completed the appropriate assessment requirements for the school principal certification or qualifies for a one (1) year period of completion of assessments under KRS 161.027(6).

Section 5. (1) A professional certificate for instructional leadership - school principal, level I, shall be issued upon successful completion of the principal internship as provided in KRS 161.027 and 704 KAR 20:470.

(2) The renewal of the professional certificate for instructional leadership - school principal, level I, shall require a recommendation from the approved recommending authority regarding the successful completion of an approved level II program. The certificate shall be valid for five (5) years.

(3) In addition to the requirements of KRS 161.027(9), each subsequent five (5) year renewal of the professional certificate for instructional leadership - school principal, level II, shall require:

(a) Successful completion of two (2) years of experience as a school principal within the preceding five (5) years; or

(b) If the applicant has not successfully completed the two (2) years of experience, completion of three (3) semester hours of additional graduate credit directly related to the position of school principal for each required year of experience the applicant has not completed.

Section 6. Implementation Dates. (1) The provisions for the issuance of the provisional and professional certificate for instructional leadership - school principal, levels I and II, shall apply to a student admitted to a program of preparation beginning September 1, 1998.

(2) A candidate admitted prior to September 1, 1998, to an approved preparation program for school principal under 704 KAR 20:380, 704 KAR 20:390, or 704 KAR 20:400 shall complete the program by September 1, 2000.

(a) A candidate formally admitted to an approved preparation program for school principal under 704 KAR 20:380, 704 KAR 20:390, or 704 KAR 20:400 by September 1, 1997, shall be eligible for the instructional leadership-school principal, all grades certificate upon:

1. Completion of the program in which the candidate is enrolled as identified in this subsection;

2. The successful completion of an approved additional three (3) to six (6) graduate semester hours. The additional graduate semester

hours shall be designed to address content of the preparation program not addressed in 704 KAR 20:380, 704 KAR 20:390, or 704 KAR 20:400;

3. A recommendation from the institution of higher education for the appropriate certificate; and

4. Successful completion of the required assessment in effect at the time of application for the certificate.

(b) A candidate who holds a valid Kentucky principal certificate shall be eligible for the instructional leadership-school principal, all grades certificate upon:

1. Enrollment in an approved program of preparation that shall be designed to address leadership at all grade levels, shall include school-based experiences, and shall require no more than three (3) to six (6) additional hours of graduate credit; and

2. A recommendation from the institution of higher education for the appropriate certificate.

(3) A candidate who fails to complete the approved program and appropriate assessments specified in subsection (2) of this section by September 1, 2000, and does not apply for certification by May 1, 2001, shall be required to qualify for the certificate identified in this administrative regulation.

(4) A college or university shall take adequate steps to inform a candidate in these programs regarding the implementation dates identified in this section.

ROSA WEAVER, Chair

APPROVED BY AGENCY: March 24, 1997

FILED WITH LRC: May 22, 1997 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative will be held on July 21, 1997, at 10 a.m. in the First Floor Conference Room, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 14, 1997, five work days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulations. If you do not wish to be heard at the public hearing, may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact person: Dr. Betty Lindsey, Office of Teacher Education and Certification, 1024 Capital Center Drive, Frankfort, Kentucky 40601, Telephone: (502) 573-4606, Fax: (502) 573-1610.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Ronda Tamme

(1) Type and number of entities affected: All applicants for the Kentucky principal certificate.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: None

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on promulgating administrative body: No additional costs.

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:  
(b) Reporting and paperwork requirements: Appropriate application process.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State General Fund.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: No comments received.

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Current regulation provides certification for principals in Kentucky at the masters' plus eighteen (18) hour level. The proposed new regulation will allow an individual to obtain principal certification at the masters' level. Therefore, allowing a shorter length of time of preparation for the principal certificate. The Education Professional Standards Board can establish certification standards only by administrative regulation.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical areas in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. Requirements are applied uniformly to all applicants for the principal certification.

# FINANCE AND ADMINISTRATION CABINET School Facilities Construction Commission (Amendment)

## 750 KAR 2:010. Education Technology Funding Program guidelines.

RELATES TO: KRS Chapter 157

STATUTORY AUTHORITY: KRS 157.650-157.665

NECESSITY, FUNCTION, AND CONFORMITY: The School Facilities Construction Commission is to promote a partnership between the state and local public school districts to help meet the educational technology needs of Kentucky's students. The General Assembly has appropriated funds for administrative support and for offers of assistance to local public school districts. This administrative regulation describes procedures and the guidelines the School Facilities Construction Commission will utilize in determining the eligibility and level of participation for each local public school district, for making offers of assistance to school districts, for verifying local public school district funding matches, and for the accumulation of credits by local public school districts that maintain their eligibility.

Section 1. Sources of Local Matching Funds. Local public school districts may match the state offer of assistance from their general fund; from the proceeds of revenue bonds or notes issued on behalf of a district to purchase technology equipment supported by the district's general fund and which are to be retired within three (3) years from the date of issuance; vendor or third party lender leases; from grants from private sources, or from interest earned by a district

on any school building construction account, provided that such interest is not already committed for expenditure on the construction project.

Section 2. Offers of Assistance. (1) Funds available within the Education Technology Escrow Account shall be distributed to local school districts for installation of the Kentucky Education Technology System ("KETS") through the cooperative program established by KRS 157.650 to 157.665, and as provided by Section 2 of this administrative regulation. ~~[Subject to approval by the Secretary of the Finance and Administration Cabinet, approximately one-half (1/2) of available funds shall be allocated to local school districts each year during the 1992-94 biennium.]~~

(2) Upon certification of the rate of participation to the commission, the commission's executive director shall notify each eligible district in writing of the amount the district is entitled to receive, and the conditions the district must meet, if it accepts the offer of assistance. Conditions districts must meet to be eligible for assistance are: the district has an unmet technology need as defined in KRS 157.615(15); ~~or an obligation to pay for technology acquired before April 2, 1992;~~ commitment by the district of local school funds equal to the amount of state assistance available to the district under the formula in KRS 157.660(1); and ~~past [except as provided by KRS 157.655(2), during the 1992-94 biennium,] expenditure of state and local technology funds in the priority order listed in the district's technology plan as approved by the state board; and, the sequence of events and deadlines to be met by the local school district in fulfilling its educational technology needs].~~

Section 3. Acceptance of Offers of Assistance. (1) The local board of education shall notify the commission in writing whether it accepts an offer of assistance within sixty (60) days after receipt of the offer of assistance. The local board's response shall indicate how much of the amount of the offer that the district plans to accept. If a school district does not have local matching funds available when the commission's offer of assistance is received, the district may accumulate credits for up to three (3) years from the date of the offer of assistance. If a district does not respond within sixty (60) days after receipt of the offer of assistance it shall be deemed to have rejected the offer of assistance and the amount of the offer shall be redistributed to remaining eligible districts. Upon written request received from a district within the original sixty (60) day period, a single thirty (30) day extension in responding to an offer of assistance may be granted by the executive director.

(2) ~~The~~ local school district shall provide to the commission copies of ~~its [their]~~ board's minutes reflecting acceptance of offers of assistance. ~~[Except as provided in subsection (3) of this section,]~~ Upon acceptance of offers of assistance, each local school district shall establish ~~[in the district's depository bank]~~ an "Education Technology [Matching] Fund[s] Restricted Account", which shall bear interest on the balance ~~[balance]~~ in the fund ~~[account]~~. All interest received on the fund ~~[accounts]~~ shall be applied to meet educational technology needs in the school district. The district ~~[districts]~~ shall provide the commission evidence of a journal entry certifying ~~[with a copy of a bank deposit ticket verifying deposit of the]~~ local matching funds in the technology fund ~~[account]~~.

~~[(2) If a district receives a grant or grants from private sources to serve as the local matching funds, and as a condition of the grant the grant funds are deposited in a trust or similar bank account, the district may submit to the commission a copy of a bank statement showing that the local matching funds are available for expenditure from such account, in lieu of opening an Education Technology Restricted Fund Account.]~~

Section 4. Bond Issuance Procedures. The commission shall provide technical advice with reference to the issuance of bonds, or entering into lease agreements to meet district technology needs, to

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all local school districts who request such advice.

DR. ROBERT TARVIN, Executive Director

APPROVED BY AGENCY: June 13, 1997

FILED WITH LRC: June 13, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on Tuesday, July 29, 1997, at 10 a.m. EDT in Room 267, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 22, 1997, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Dr. Robert Tarvin, Executive Director, School Facilities Construction Commission, Room 264, Capitol Annex, Frankfort, Kentucky 40601.

### REGULATORY IMPACT ANALYSIS

Contact Person: Dr. Robert Tarvin, Executive Director

1. Type and number of entities affected: 176 local school districts.
2. Direct and indirect costs or savings on the:
  - a. Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. None
  - b. Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. None
  - c. Compliance, reporting and paperwork requirements of those affected, including factors increasing or decreasing costs (note any effects upon competition) for the:
    1. First year following implementation: Small decrease in costs to local school boards because less paperwork will be required to receive a state technology grant.
    2. Second and subsequent years: Same as first year.
3. Effects on the promulgating administrative body:
  - a. Direct and indirect costs or savings:
    1. First year: None
    2. Continuing costs or savings: None
  - b. Additional factors increasing or decreasing costs: None
  - c. Reporting and paperwork requirements: None
4. Assessment of anticipated effect on state and local revenues: None
5. Source of revenue to be used for implementation and enforcement of administrative regulation: General Fund - no increase in cost enforcement presently occurring on similar regulation.
6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:
  - a. Geographical area in which administrative regulation will be implemented: None
  - b. Kentucky: None
7. Assessment of alternative methods; reasons why alternatives were rejected: Current system outdated because of new accounting system used in schools.
8. Assessment of expected benefits:
  - a. Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None
  - b. State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect would result.

c. If detrimental effect would result, explain detrimental effect: N/A  
9. Identify any statute, rule, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

a. Necessity of proposed regulation if in conflict: N/A  
b. If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

10. Any additional information or comments: None

11. TIERING: Is tiering applied? No. Changes apply equally to all local school districts.

### PUBLIC PROTECTION AND REGULATION CABINET Kentucky Racing Commission (Amendment)

#### 811 KAR 1:090. Stimulants and drugs.

RELATES TO: KRS 230.630(1), (3), 230.640, 230.700

STATUTORY AUTHORITY: KRS 230.630(3), (4), (7)

NECESSITY, FUNCTION, AND CONFORMITY: To regulate conditions under which harness racing shall be conducted in Kentucky. The function of this administrative regulation is to provide for the testing of horses for stimulants and drugs and the administrative regulation of stimulants and drugs.

Section 1. (1) At every meeting except as stated herein where pari-mutuel wagering is permitted, the winning horse in every heat and/or race shall be subjected to a urine test and/or a blood test and the winning horse and second place horse in every perfecta or quinella race shall [may] be subjected to a urine test and/or a blood test for the purpose of determining thereby the presence of any drug, stimulant, sedative, depressant, or medicine. The winning horse and/or the second and third horses in a trifecta shall [may] be tested the same as in the rule above. Also, the judges shall [may] order any horse in a race to be subjected to a urine, blood and/or saliva test. Such tests shall be made only by qualified veterinarians and by laboratories designated by the commission. In addition to the above, the winning horse and second horse in every heat or dash of a race at any track with a total purse in excess of \$5,000 may be subjected to both blood and a urine test. Positive tests during time trials shall be treated as a violation. The winning time shall be disallowed and the trainer of record may be fined, suspended or both.

(2) The commission may, in its discretion, or at the request of a member, authorize or direct a saliva, blood, urine or other test of any horse racing at any meeting.

Section 2. (1) During the taking of the blood and/or urine sample by the veterinarian, the owner, trainer or authorized agent shall [may] be present at all times. Samples so taken shall be placed in two (2) containers and shall immediately be sealed and the evidence of such sealing indicated thereon by the signature of the representative of the owner or trainer. One (1) part of the sample is to be placed in a depository under the supervision of the presiding judge and/or any other agency the commission shall [may] designate to be safeguarded until such time as the report on the chemical analysis of the other portion of the split sample is received.

(2) Should a positive report be received, an owner or trainer shall have the right to have the other portion of the split sample inserted in with a subsequent group being sent for testing or may demand that it be sent to another chemist for analysis, the cost of which shall [will] be paid by the party requesting the test.

Section 3. (1) Whenever there is a positive test finding presence of any drug, stimulant, sedative or depressant prior to the post-race test, the laboratory shall immediately notify the judge who shall immediately report such findings to the

(2) When a positive report is received from the laboratory by the presiding judge, the persons held responsible shall be notified and a thorough investigation shall be conducted by or on behalf of the judges. A time shall be set by the judges for a hearing to dispose of the matter. The time set for the hearing shall not exceed four (4) racing days after the responsible persons were notified. The hearing ~~shall~~ ~~may~~ be continued, if in the opinion of the judges, circumstances justify such action.

(3) Should the chemical analysis of saliva, blood, urine or other sample of the postrace test taken from a horse indicate the presence of a forbidden narcotic, stimulant, depressant, or local anesthetic, it shall be considered prima facie evidence that such has been administered to the horse.

(4) Upon receipt of written notification of a positive test finding, the judges shall not cause the immediate suspension of the horse from further participation in racing.

Section 4. Any person or persons who shall administer or influence or conspire with any other person or persons to administer to any horse any drug, medicament, stimulant, depressant, narcotic or hypnotic to such horse within forty-eight (48) hours of his race, shall be subject to penalties provided in this rule. No horse shall be tubbed in ice in the paddock prior to their racing commitment.

Section 5. Whenever the postrace test or tests prescribed in Section 1 disclose the presence in any horse of any drug, stimulant, depressant or sedative, in any amount whatsoever, it shall be presumed that the same was administered by the person or persons having control and/or care and/or custody of such horse with the intent thereby to affect the speed or condition of such horse and the result of the race in which it participated.

Section 6. A trainer shall be responsible at all times for the condition of all horses trained by him. No trainer shall start a horse or permit a horse in his custody to be started if he knows, or if by the exercise of reasonable care he might have known or have cause to believe, that the horse has received any drug, stimulant, sedative, depressant, medicine or other substance that could result in a positive test. Every trainer must guard or cause to be guarded each horse trained by him in such manner and for such period of time prior to racing the horse so as to prevent any person not employed by or connected with the owner or trainer from administering any drug, stimulant, sedative, depressant, or other substance resulting in a postrace positive test.

Section 7. Any owner, trainer, driver or agent of the owner, having the care, custody and/or control of any horse who shall refuse to submit such horse to a saliva test or other tests as herein provided or ordered by the judges shall be guilty of a violation of this rule. Any horse that refuses to submit to a prerace blood test shall be required to submit to a postrace saliva and urine test regardless of its finish.

Section 8. Any horse in which an offense was detected under any section of this rule shall be placed last in the order of finish and all winnings of such horse shall be forfeited and paid over to the commission for redistribution among the remaining horses in the race entitled to same. No such forfeiture and redistribution of winnings shall effect the distribution of the pari-mutuel pools at tracks where pari-mutuel wagering is conducted, when such distribution of pools is made upon the official placing at the conclusion of the heat or dash.

Section 9. Prerace Blood Test. Where there is a prerace blood test which shows that there is an element present in the blood indicative of a stimulant, depressant or any unapproved medicament, the horse shall immediately be scratched from the race and an investigation conducted by the officials to determine if there was a violation of Section 4 of this administrative regulation.

Section 10. Hypodermic Syringe Prohibited. No person except a licensed veterinarian approved by the commission shall have within the grounds of a licensed harness race track in or upon the premises which he occupies, or has a right to occupy, or in his personal property or effects any hypodermic syringe, hypodermic needle, or other devices which can be used for the injection or other infusion into a horse of a drug, stimulant or narcotic. Every licensed harness racing association upon the grounds of which horses are lodged or kept, is required to use all reasonable effort to prevent violation of this rule.

Section 11. (1) All veterinarians practicing on the grounds of an extended pari-mutuel meeting shall keep a log of their activities on a form provided by the commission and shall submit a copy of it to the commission office of the track each day of a race meeting. The log shall include:

- (a) Name of horse;
- (b) Nature of ailment;
- (c) Type of treatment;
- (d) Date and hour of treatment.

(2) It shall be the responsibility of the veterinarian to report to the presiding judge any internal medication given by him by injection or orally to any horse after he has been declared to start in any race.

Section 12. (1) Any veterinarian practicing veterinary medicine on a race track where a race meeting is in progress or any other person using a needle or syringe shall use only one (1) time disposable type needles and a disposable needle shall not be reused. The disposable needles shall be kept in his possession until disposed of by him off the track.

(2) No veterinarian, assistant veterinarian or employee of same shall leave a needle or syringe with anyone on a race track where a race meeting is in progress except upon written authorization from the commission.

Section 13. (1) Only the commission veterinarian or a licensed veterinarian approved by the commission may approve and prescribe the use of lasix for racing providing that the commission veterinarian or a licensed veterinarian approved by the commission actually sees the horse bleed from the nostrils or the horse is scoped and declared a bleeder. ~~[The commission veterinarian must accompany the practitioner when a horse is scoped.]~~ If the commission veterinarian or a licensed veterinarian approved by the commission agrees that the horse is a bleeder, the horse shall qualify and meet the standards of the meeting. Only the commission veterinarian shall administer lasix prior to a race, which includes qualifying, nonbetting, pari-mutuel races and time trials. The use of oral lasix is forbidden. A schedule for scoping will be maintained by the commission veterinarian. The Kentucky ~~[Harness]~~ Racing Commission shall keep a record of horses using lasix for the first time.

(2) ~~[A lasix use form (blue) must be submitted to the commission office at the track for approval of the use of lasix.]~~

~~(3)~~ If the trainer no longer wishes to use lasix, a no-use form (white) must be submitted to the commission office at the track and the horse must perform in a qualifying race without the use of lasix and meet the standards of the meeting before being allowed to race without lasix. To be permitted to use lasix again, the horse must qualify and meet the standards of the meeting.

~~(3)~~ ~~(4)~~ No more than 250 milligrams four (4) hours prior to a race shall be administered.

~~(5)~~ ~~(6)~~ A fee of ten (10) dollars is to be paid to the commission veterinarian at the time of service by those who wish to have lasix administered to their horses; this fee to cover the services of the commission veterinarian and the cost of testing.

~~(5)~~ ~~(6)~~ Testing will be quantitative, with those exceeding thirty (30) nanograms per milliliter of blood tested resulting in a warning to the owner. Testing will be at random, not to exceed six (6) samples

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per day. A mutual decision to take random samples will be made by the commission veterinarian and the judges. A second violation shall result in a fine against the owner, not to exceed \$5,000.

(6) ~~[(7)]~~ Should a horse bleed through normal treatment with lasix, the horse would not be eligible to race for 120 days. After 120 days, the horse must again qualify on lasix. Should the horse bleed again, it would not be eligible to race for one (1) year.

Section 14. The penalty for violation of any sections of this rule, unless otherwise provided, shall be a fine of not to exceed \$5,000, suspension for a fixed or indeterminate time, or both; or expulsion.

RICHARD "SMITTY" TAYLOR, Chairman

APPROVED BY AGENCY: June 9, 1997

FILED WITH LRC: June 13, 1997 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 25, 1997, at 10 a.m. at the offices of the Kentucky Racing Commission, 4063 Iron Works Pike, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 18, 1997, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Mr. Calvert Bratton, Deputy Commissioner, Kentucky Racing Commission, 4063 Iron Works Pike, Lexington, Kentucky 40511, (606) 246-2040 Phone, (606) 246-2039 Fax.

### REGULATORY IMPACT ANALYSIS

Contact Person: Calvert Bratton

(1) Type and number of entities affected: This would affect horses that will be qualifying for the use of the therapeutic medication lasix, for the first time. The occurrence of a horse that will be qualifying for the use of lasix for the first time is about one in 100.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There are none.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There are none.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There are no changes.

2. Second and subsequent years: There are no changes.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no changes that affect the Kentucky Racing Commission.

2. Continuing costs or savings: There are none.

3. Additional factors increasing or decreasing costs: There are none.

(b) Reporting and paperwork requirements: The paper work remains the same.

(4) Assessment of anticipated effect on state and local revenues: This change will not affect state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Monies paid to cover the administration of lasix or the scoping of a horse shall be paid by the

owner of the horse.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: There are none.

(b) Kentucky: There are none.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There are none.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There are none.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would be none.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? Tiering was not applied. No fee is paid to the Kentucky Racing Commission.

### CABINET FOR HEALTH SERVICES

#### Office of Inspector General

#### (Amendment)

902 KAR 20:026. Operations and services; skilled nursing facilities.

RELATES TO: KRS 216B.010 to 216B.131, 216B.990

STATUTORY AUTHORITY: KRS 216B.042, 216B.105, 314.011(8), 314.042(8), 320.240(14), EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 and 216B.105 mandate that the Cabinet for Health Services [Human Resources] regulate health facilities and health services. This administrative regulation establishes licensure requirements for the operation of skilled nursing facilities. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Office of Inspector General and its programs under the Cabinet for Health Services.

Section 1. Definitions. (1) "Administrator" means a person who is licensed as a nursing home administrator pursuant to KRS 216A.080.

(2) ~~"Board" means the Commission for Health Economics Control in Kentucky.~~

~~(3)~~ "Facility" means a skilled nursing facility.

(3) ~~[(4)]~~ "License" means an authorization issued by the cabinet for the purpose of operating a skilled nursing facility and offering skilled nursing services.

(4) ~~[(5)]~~ "Occupational therapist" means a person who is registered by the American Occupational Therapy Association or a graduate of a program in occupational therapy approved by the Council on Medical Education of the American Medical Association in collaboration with the American Occupational Therapy Association and who is engaged in or has completed the required supervised clinical experience period prerequisite to registration by the American Occupational Therapy Association.

~~[(6)] "Speech pathologist" means a person who:~~

~~(a) Meets the education and experience requirements for a Certificate of Clinical Competence in the appropriate area (speech~~

pathology or audiology) granted by the American Speech and Hearing Association; or

~~(b) Meets the educational requirements for certification and is in the process of accumulating the supervised experience required for certification.~~

(5) ~~(7)~~ "Qualified dietician" or "nutritionist" means:

(a) A person who has a bachelor of science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietician by ADA; or

(b) A person who has a masters degree in nutrition and is a member of ADA or is eligible for registration by ADA; or

(c) A person who has a bachelor of science degree in home economics and three (3) years of work experience with a registered dietician.

(6) ~~(8)~~ "Qualified medical record practitioner" means a person who has graduated from a program for medical record administrators or technicians accredited by the Council on Medical Education of the American Medical Association and the American Medical Record Association; and who is certified as a Registered Records Administrator or an Accredited Record Technician by the American Medical Record Association.

(7) ~~(9)~~ "Qualified social worker" means a person who is licensed pursuant to KRS 335.090, if applicable, and who is a graduate of a school of social work accredited by the Council on Social Work Education.

~~(10) "Protective devices" means devices that are designed to protect a person from falling, to include side rails, safety vest or safety belt.~~

(8) ~~(11)~~ "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body.

(9) "Speech pathologist" means a person who:

(a) Meets the education and experience requirements for a certificate of clinical competence in the appropriate area (speech pathology or audiology) granted by the American Speech and Hearing Association; or

(b) Meets the educational requirements for certification and is in the process of accumulating the supervised experience required for certification.

Section 2. Scope of Operations and Services. Skilled nursing facilities are establishments with permanent facilities including inpatient beds. Services provided include medical services, and continuous nursing services to provide treatment for patients. Patients in a skilled nursing facility are patients who require inpatient care but are not in an acute phase of illness, and who currently require primarily convalescent or rehabilitative services and have a variety of medical conditions.

Section 3. Administration and Operation. (1) Licensee. The licensee shall be legally responsible for the facility and for compliance with federal, state and local laws and regulations pertaining to the operation of the facility.

(2) Administrator. All facilities shall have an administrator who is responsible for the operation of the facility and who shall delegate such responsibility in his absence.

(3) Policies. The facility shall establish written policies and procedures that govern all services provided by the facility. The written policies shall include:

(a) Personnel policies, practices and procedures that support sound patient care.

(b) Notification of changes in patient status and service cost. There shall be written policies and procedures relating to notification of responsible person(s) in the event of significant changes in patient

status, patient charges, billings, and other related administrative matters.

(c) Patient care policies. The facility shall have written policies to govern the skilled nursing care and related medical and other services provided, which shall be developed with the advice of professional personnel, including one (1) or more physicians and one (1) or more registered nurses and other health personnel (e.g., social workers, dietitians, pharmacists, speech pathologists and audiologists, physical and occupational therapists and mental health personnel). Pharmacy policies and procedures shall be developed with the advice of a subgroup of physicians and pharmacists who serve as a pharmacy and therapeutics committee. A physician or a registered nurse shall be responsible for assuring compliance with and annual review of these policies. In addition to written policies for services, the facility shall have written policies to include:

1. Admission, transfer, and discharge policies including categories of patients accepted and not accepted by the facility.

2. Medication stop orders;

3. Medical records;

4. Transfer agreement;

5. Utilization review; and

6. Use of restraints.

(d) Adult and child protection. The facility shall have written policies which assure the reporting of cases of abuse, neglect or exploitation of adults and children ~~(to the Cabinet for Human Resources)~~ pursuant to KRS Chapters 209 and 620.

(e) Missing patient procedures. The facility shall have a written procedure to specify in a step-by-step manner the actions which shall be taken by staff when a patient is determined to be lost, unaccounted for or on other unauthorized absence.

(4) Patient rights. Patient rights shall be provided for pursuant to KRS 216.510 to 216.525.

(5) Admission.

(a) Patients shall be admitted only upon the referral of a physician. Additionally, the facility shall admit only persons who require medical and continuous skilled nursing care and who currently require primarily convalescent or rehabilitative services for a variety of medical conditions. The facility shall not admit persons whose care needs exceed the capability of the facility.

(b) Upon admission the facility shall obtain the patient's medical diagnosis, physician's orders for the care of the patient and the transfer form. The facility shall obtain a medical evaluation within forty-eight (48) hours of admission, unless an evaluation was performed within five (5) days prior to admission. The medical evaluation shall include current medical findings, rehabilitation potential, a summary of the course of treatment followed in the hospital or intermediate care facility (a current hospital discharge summary containing the above information shall be acceptable).

(c) If the physician's orders for the immediate care of a patient are unobtainable at the time of admission, the facility shall contact the physician with responsibility for emergency care to obtain temporary orders.

(d) Before admission the patient and a responsible member of his family or committee shall be informed in writing of the established policies of the facility to include: fees, reimbursement, visitation rights during serious illness, visiting hours, type of diets offered and services rendered.

(6) Discharge planning. The facility shall have a discharge planning program to assure the continuity of care for patients being transferred to another health care facility or being discharged to the home.

(7) Transfer and discharge. The facility shall comply with the requirements of 900 KAR 2:050 when transferring or discharging residents. ~~(Transfer procedures and agreements.)~~

(a) The facility shall have written transfer procedures and agreements for the transfer of patients to other health care facilities which can provide a level of inpatient care not provided by the facility.

Any facility which does not have a transfer agreement in effect but which documents a good faith attempt to enter into such an agreement shall be considered to be in compliance with the licensure requirement. The transfer procedures and agreements shall specify the responsibilities each institution assumes in the transfer of patients, shall establish responsibility for notifying the other institution promptly of the impending transfer of a patient, and shall arrange for appropriate and safe transportation.

(b) When the patient's condition exceeds the scope of services of the facility, the patient, upon physician's orders (except in cases of emergency), shall be transferred promptly to an appropriate level of care.

(c) The agreement shall provide for the transfer of personal effects, particularly money and valuables, and for the transfer of information related to these items.

(d) When a transfer is to another level of care within the facility, the complete patient record or a current summary thereof shall be transferred with the patient.

(e) If the patient is transferred to another health care facility or home to be cared for by a home health agency, a transfer form shall accompany the patient. The transfer form shall include at least the following: physician's orders (if available), current information relative to diagnosis with history of problems requiring special care, a summary of the course of prior treatment, special supplies or equipment needed for patient care, and pertinent social information on the patient and his family.

(f) Except in an emergency, the patient, his next of kin, or responsible person~~(s)~~ if any, and the attending physician shall be consulted in advance of the transfer or discharge of any patient.

(8) Tuberculosis testing. All employees and patients shall be tested for tuberculosis in accordance with the provisions of 902 KAR 20:200, tuberculosis testing in long term care facilities.

(9) Personnel.

(a) Job descriptions. Written job descriptions shall be developed for each category of personnel to include qualifications, lines of authority and specific duty assignments.

(b) Employee records. Current employee records shall be maintained and shall include a resume of each employee's training and experience, evidence of current licensure or registration where required by law, health records, evaluation of performance, records of in-service training and ongoing education, along with employee's name, address and social security number.

(c) Health requirements. No employee contracting an infectious disease shall appear at work until the infectious disease can no longer be transmitted.

(d) Staffing classification requirements.

1. The facility shall have adequate personnel to meet the needs of the patients on a twenty-four (24) hour basis. The number and classification of personnel required shall be based on the number of patients, and the amount and kind of personal care, nursing care, supervision, and program needed to meet the needs of the patients, as determined by medical orders and by services required by this administrative regulation.

2. If the staff to ~~(4)~~ patient ratio does not meet the needs of the patients, the Division for Licensing and Regulation shall determine and inform the administrator in writing how many additional personnel are to be added and of what job classification, and shall give the basis for this determination.

3. The facility shall have a director of nursing service who is a registered nurse and who works full time during the day, and who devotes full time to the nursing service of the facility. If the director of nursing has administrative responsibility for the facility, there shall be an assistant director of nursing, who shall be a registered nurse, so that there shall be the equivalent of a full-time director of nursing service. The director of nursing shall be trained or experienced in areas of nursing service, administration, rehabilitation nursing, psychiatric or geriatric nursing. The director of the nursing service

shall be responsible for:

a. Developing and maintaining nursing service objectives, standards of nursing practice, nursing procedure manuals, and written job descriptions for each level of nursing personnel;

b. Recommending to the administrator the number and level of nursing personnel to be employed, participating in their recruitment and selection, and recommending termination of employment when necessary;

c. Assigning and supervising all levels of nursing personnel;

d. Participating in planning and budgeting for nursing care;

e. Participating in the development and implementation of patient care policies and bringing patient care problems requiring changes in policy to the attention of the professional policy advisory group;

f. Coordinating nursing services with other patient care services;

g. Planning and conducting orientation programs for new nursing personnel and continuing in-service education for all nursing personnel;

h. Participating in the selection of prospective patients in terms of nursing services they need and nursing competencies available;

i. Assuring that a nursing care plan shall be established for each patient and that his plan shall be reviewed and modified as necessary;

j. Assuring that registered nurses, licensed practical nurses, nurses' aides and orderlies are assigned duties consistent with their training and experience.

4. Supervising nurse. Nursing care shall be provided by or under the supervision of a full-time registered nurse. The supervising nurse shall be a licensed registered nurse who may be the director of nursing or the assistant director of nursing and shall be trained or experienced in the areas of nursing administration and supervision, rehabilitative nursing, psychiatric or geriatric nursing. The supervising nurse shall make daily rounds to all nursing units performing such functions as visiting each patient, and reviewing medical records, medication cards, patient care plans, and staff assignments, and whenever possible accompanying physicians when visiting patients.

5. Charge nurse. There shall be at least one (1) registered nurse or licensed practical nurse on duty at all times and who is responsible for the nursing care of patients during her tour of duty. When a licensed practical nurse is on duty, a registered nurse shall be on call.

6. Pharmacist. The facility shall employ a licensed pharmacist on a full-time, part-time or consultant basis to direct pharmaceutical services.

7. Therapists.

a. If rehabilitative services beyond rehabilitative nursing care are offered, whether directly or through cooperative arrangements with agencies that offer therapeutic services, these services shall be provided or supervised by qualified therapists to include licensed physical therapists, speech pathologists and occupational therapists.

b. When supervision is less than full time, it shall be provided on a planned basis and shall be frequent enough, in relation to the staff therapist's training and experience, to assure sufficient review of individual treatment plans and progress.

c. In a facility with an organized rehabilitation service using a multidisciplinary team approach to meet all the needs of the patient, and where all therapists' services are administered under the direct supervision of a physician qualified in physical medicine who will determine goals and limits of the therapists' work, and prescribes modalities and frequency of therapy, persons with qualifications other than those described in subsection (8)(d)7a of this section may be assigned duties appropriate to their training and experience.

8. Dietary. Each facility shall have a full-time person designated by the administrator, responsible for the total food service operation of the facility and who shall be on duty a minimum of thirty-five (35) hours each week.

9. The administrator shall designate a person for each of the following areas who will be responsible for:

a. Medical records. The person responsible for the records shall

maintain, complete and preserve all medical records. If the person is not a qualified medical record practitioner he shall be trained by and receive regular consultation from a qualified medical record practitioner.

b. Social services. There shall be a full-time or part-time social worker employed by the facility, or a person who has training and experience in related fields to find community resources, to be responsible for the social services. If the facility does not have a qualified social worker on its staff, consultation shall be provided by a qualified social worker. The person responsible for this area of service shall have information promptly available on health and welfare resources in the community.

c. Patient activities. This person shall have training or experience in directing group activities.

(e) In-service educational programs.

1. There shall be an in-service education program in effect for all nursing personnel at regular intervals in addition to a thorough job orientation for new personnel. Opportunities shall be provided for nursing personnel to attend training courses in rehabilitative nursing and other educational programs related to the care of long-term patients. Skill training for nonprofessional nursing personnel shall begin during the orientation period, to include demonstration, practice and supervision of simple nursing procedures applicable in the individual facility. It shall also include simple rehabilitative nursing procedures to be followed in emergencies. All patient care personnel shall be instructed and supervised in the care of emotionally disturbed and confused patients, and shall be assisted to understand the social aspects of patient care.

2. Social services training of staff. There shall be provisions for orientation and in-service training of staff directed toward understanding emotional problems and social needs of sick and infirm aged persons and recognition of social problems of patients and the means of taking appropriate action in relation to them. Either a qualified social worker on the staff, or one (1) from outside the facility, shall participate in training programs, case conferences, and arrangements for staff orientation to community services and patient needs.

(10) Medical records.

(a) The facility shall develop and maintain a system of records retention and filing to insure completeness and prompt location of each patient's record. The records shall be held confidential. The records shall be in ink or typed and shall be legible. Each entry shall be dated and signed. Each record shall include:

1. Identification data including the patient's name, address and social security number (if available); name, address and telephone number of referral agency; name and telephone number of personal physician; name, address and telephone number of next of kin or other responsible person; and date of admission.

2. Admitting medical evaluation including current medical findings, medical history, physical examination and diagnosis. (The medical evaluation may be a copy of the discharge summary or history and physical report from a hospital, or an intermediate care facility if done within five (5) days prior to admission.)

3. ~~The physician's~~ Orders for medication, diet, and therapeutic services. These shall be dated and signed by the prescribing physician or advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8), or therapeutically-certified optometrists as authorized in KRS 320.240(14).

4. Physician's progress notes describing significant changes in the patient's condition, written at the time of each visit.

5. Findings and recommendations of consultants.

6. A medication sheet which contains the date, time given, name of each medication or prescription number, dosage and name of prescribing physician or advanced registered nurse practitioner or therapeutically-certified optometrist.

7. Nurse's notes indicating changes in patient's condition, actions, responses, attitudes, appetite, etc. Nursing personnel shall make notation of response to medications, response to treatments, visits by

physician and phone calls to the physician, medically prescribed diets and restorative nursing measures.

8. Nursing supervisor's written assessment of the patient's monthly general condition.

9. Reports of dental, laboratory and x-ray services.

10. Changes in patient's response to the activity and therapeutic recreation program.

11. A discharge summary completed, signed and dated by the attending physician within one (1) month of discharge from the facility.

(b) Retention of records. After death or discharge the completed medical record shall be placed in an inactive file and retained for five (5) years or in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

Section 4. Provision of Services. (1) Physician services.

(a) The health care of each patient shall be under supervision of a physician who, based on an evaluation of the patient's immediate and long-term needs, prescribes a planned regimen of medical care which covers indicated medications, treatments, rehabilitative services, diet, special procedures recommended for the health and safety of the patient, activities, plans for continuing care and discharge.

(b) Patients shall be evaluated by a physician at least once every thirty (30) days for the first ninety (90) days following admission. Subsequent to the 90th day following admission, the patients shall be evaluated by a physician every sixty (60) days. There shall be evidence in the patient's medical record of the physician's visits to the patient at appropriate intervals.

(c) There shall be evidence in the patient's medical record that the patient's attending physician has made arrangement for the medical care of the patient in the physician's absence.

(d) Availability of physicians for emergency care. The facility shall have arrangements with one (1) or more physicians who will be available to furnish necessary medical care in case of an emergency if the physician responsible for the care of the patient is not immediately available. A schedule listing the names and telephone numbers of these physicians and the specific days each shall be on call shall be posted in each nursing station. There shall be established procedures to be followed in an emergency, which cover immediate care of the patient, persons to be notified, and reports to be prepared.

(2) Nursing services.

(a) Twenty-four (24) hour nursing service. There shall be twenty-four (24) hour nursing service with a sufficient number of nursing personnel on duty at all times to meet the total needs of patients. Nursing personnel shall include registered nurses, licensed practical nurses, aides and orderlies. The amount of nursing time available for patient care shall be exclusive of nonnursing duties. Sufficient nursing time shall be available to assure that each patient:

1. Shall receive treatments, medication, and diets as prescribed;

2. Shall receive proper care to prevent decubiti and shall be kept comfortable, clean and well-groomed;

3. Shall be protected from accident and injury by the adoption of indicated safety measures;

1. Shall be treated with kindness and respect.

(b) Rehabilitative nursing care. There shall be an active program of rehabilitative nursing care directed toward assisting each patient to achieve and maintain his highest level of self-care and independence.

1. Rehabilitative nursing care initiated in the hospital shall be continued immediately upon admission to the facility.

2. Nursing personnel shall be taught rehabilitative nursing measures and shall practice them in their daily care of patients. These measures shall include:

a. Maintaining good body alignment and proper positioning of bedfast patients;

b. Encouraging and assisting bedfast patients to change positions at least every two (2) hours, day and night to stimulate circulation and prevent decubiti and deformities;

c. Making every effort to keep patients active and out of bed for reasonable periods of time, except when contraindicated by physician's orders, and encouraging patients to achieve independence in activities of daily living by teaching self care, transfer and ambulation activities;

d. Assisting patients to adjust to their disabilities, to use their prosthetic devices, and to redirect their interests if necessary;

e. Assisting patients to carry out prescribed physical therapy exercises between visits of the physical therapist.

(c) Dietary supervision. Nursing personnel shall assure that patients are served diets as prescribed. Patients needing help in eating shall be assisted promptly upon receipt of meals. Food and fluid intake of patients shall be observed and deviations from normal shall be reported to the charge nurse. Persistent unresolved problems shall be reported to the physician.

(d) Nursing care plan. There shall be written nursing care plans for each patient based on the nature of illness, treatment prescribed, long and short term goals and other pertinent information.

1. The nursing care plan shall be a personalized, daily plan for individual patients. It shall indicate what nursing care is needed, how it can best be accomplished for each patient, what are the patient's preferences, what methods and approaches are most successful, and what modifications are necessary to insure best results.

2. Nursing care plans shall be available for use by all nursing personnel.

3. Nursing care plans shall be reviewed and revised as needed.

4. Relevant nursing information from the nursing care plan shall be included with other medical information when patients are transferred.

(3) Specialized rehabilitative services.

(a) Rehabilitative services shall be provided upon written order of the physician or advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8), or therapeutically-certified optometrists as authorized in KRS 320.240(14), which indicates anticipated goals and prescribed specific modalities to be used and frequency of physical, speech and occupational therapy services.

(b) Therapy services shall include:

1. Physical therapy which includes:

a. Assisting the physician in his evaluation of patients by applying muscle, nerve, joint, and functional ability tests;

b. Treating patients to relieve pain, develop or restore functions, and maintain maximum performance, using physical means such as exercise, massage, heat, water, light, and electricity.

2. Speech therapy which include:

a. Services in speech pathology or audiology;

b. Cooperation in the evaluation of patients with speech, hearing, or language disorders;

c. Determination and recommendation of appropriate speech and hearing services.

3. Occupational therapy services which includes:

a. Assisting the physician in his evaluation of the patient's level of function by applying diagnostic and prognostic tests;

b. Guiding the patient in his use of therapeutic creative and self-care activities for improving function.

(c) Therapists shall collaborate with the facility's medical and nursing staff in developing the patient's total plan of care.

(d) Ambulation and therapeutic equipment. Commonly used ambulation and therapeutic equipment necessary for services offered shall be available for use in the facility such as parallel bars, hand rails, wheelchairs, walkers, walkerettes, crutches and canes. The therapists shall advise the administrator concerning the purchase, rental, storage and maintenance of equipment and supplies.

(4) Personal care services. Personal care services shall include: assistance with bathing, shaving, cleaning and trimming of fingernails and toenails, cleaning of the mouth and teeth, and washing, grooming and cutting of hair.

(5) Pharmaceutical services.

(a) Procedures for administration of pharmaceutical services. The facility shall provide appropriate methods and procedures for obtaining, dispensing and administering of drugs and biologicals, which have been developed with the advice of a staff pharmacist, or a consultant pharmacist, in cooperation with the facility's pharmacy and therapeutics committee.

(b) If the facility has a pharmacy department, a licensed pharmacist shall be employed to administer the pharmacy department.

(c) If the facility does not have a pharmacy department, it shall have provisions for promptly and conveniently obtaining prescribed drugs and biologicals from a community or institutional pharmacy holding a valid pharmacy permit issued by the Kentucky Board of Pharmacy, pursuant to KRS 315.035.

(d) If the facility does not have a pharmacy department, but does maintain a supply of drugs:

1. The consultant pharmacist shall be responsible for the control of all bulk drugs and maintain records of their receipt and disposition.

2. The consultant pharmacist shall dispense drugs from the drug supply, properly label them and make them available to appropriate licensed nursing personnel.

3. Provisions shall be made for emergency withdrawal of medications from the drug supply.

(e) An emergency medication kit approved by the facility's professional personnel shall be kept readily available. The facility shall maintain a record of what drugs are in the kit and document how the drugs are used.

(f) Medication services.

1. ~~[Conformance with physician's orders.]~~ All medications administered to patients shall be ordered in writing by the patient's physician or advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8), or therapeutically-certified optometrist as authorized in KRS 320.240(14). Telephone orders shall be given only to a licensed nurse or pharmacist immediately reduced to writing, signed by the nurse and countersigned by the physician or advanced registered nurse practitioner or therapeutically-certified optometrist within forty-eight (48) hours. Medications not specifically limited as to time or number of doses, when ordered, shall be automatically stopped in accordance with the facility's written policy or stop orders. The registered nurse or the pharmacist shall review each patient's medication profile at least monthly. The patient's ~~[prescribing]~~ physician shall review each patient's medications at the time of the medical evaluation pursuant to subsection (1)(b) of this section. The patient's attending physician shall be notified of stop order policies and contacted promptly for renewal of such orders so that continuity of the patient's therapeutic regimen is not interrupted. Medications are to be released to patients on discharge only on the written authorization of the physician.

2. Administration of medications. All medications shall be administered by licensed medical or nursing personnel in accordance with ~~[the Medical Practice Act (KRS 311.530 to 311.620)]~~ and ~~[Nurse Practice Act of (KRS Chapter 314)]~~, or by personnel who have completed a state approved training program from a state approved training provider. The administration of oral and topical medicines by certified medicine technicians shall be under the supervision of licensed medical or nursing personnel. Intramuscular injections shall be administered by a licensed nurse or a physician. If intravenous injections are necessary they shall be administered by a licensed physician, a registered nurse or a properly trained licensed nurse. Each dose administered shall be recorded in the medical record.

a. The nursing station shall have readily available items necessary for the proper administration of medications.

b. In administering medications, medication cards or other state approved systems shall be used and checked against the physician's orders.

c. Medications prescribed for one (1) patient shall not be administered to any other patient.

d. Self-administration of medications by patients shall not be

permitted except on special order of the patient's physician or in a pre-discharge program under the supervision of a licensed nurse.

e. Medication errors and drug reactions shall be immediately reported to the patient's physician and an entry thereof made in the patient's medical record as well as on an incident report.

f. Up-to-date medication reference texts and sources of information shall be provided for use by the nursing staff (e.g., the American Hospital Formulary Service of the American Society of Hospital Pharmacists, Physicians Desk Reference or other suitable references).

### 3. Labeling and storing medications.

a. All medications shall be plainly labeled with the patient's name, the name of the drug, strength, name of pharmacy, prescription number, date, physician name, caution statements and directions for use except where accepted modified unit dose systems conforming to federal and state laws are used. The medications of each patient shall be kept and stored in their original containers and transferring between containers shall be prohibited. All medicines kept by the facility shall be kept in a locked place and the persons in charge shall be responsible for giving the medicines and keeping them under lock and key. Medications requiring refrigeration shall be kept in a separate locked box of adequate size in the refrigerator in the medication area. Drugs for external use shall be stored separately from those administered by mouth and injection. Provisions shall also be made for the locked separate storage of medications of deceased and discharged patients until such medication is surrendered or destroyed in accordance with federal and state laws and regulations.

b. Medication containers having soiled, damaged, incomplete, illegible, or makeshift labels shall be returned to the issuing pharmacist or pharmacy for relabeling or disposal. Containers having no labels shall be destroyed in accordance with state and federal laws.

c. Cabinets shall be well lighted and of sufficient size to permit storage without crowding.

d. Medications no longer in use shall be disposed of or destroyed in accordance with federal and state laws and regulations.

e. Medications having an expiration date shall be removed from usage and properly disposed of after such date.

f. Controlled substances. Controlled substances shall be kept under double lock (e.g., in a locked box in a locked cabinet). There shall be a controlled substances record, in which is recorded the name of the patient, the date, time, kind, dosage, balance, remaining and method of administration of all controlled substances; the name of the physician who prescribed the medications; and the name of the nurse who administered it, or staff who supervised the self-administration. In addition, there shall be a recorded and signed schedule II controlled substances count daily, and schedule III, IV and V controlled substances count once per week by those persons who have access to controlled substances. All controlled substances which are left over after the discharge or death of the patient shall be destroyed in accordance with [KRS 218A.230, or] 21 CFR 1307.21, or sent via registered mail to the Controlled Substances Enforcement Branch of the Kentucky Cabinet for Human Resources.

4. Use of restraints [or protective devices. If a patient becomes disturbed or unmanageable, the patient's physician shall be notified in order to evaluate and direct the patient's care].

a. No [form-of] restraints [or protective devices] shall be used except as permitted by KRS 216.515(6). [under written orders of the attending physician.

a. Protective devices. Protective devices may be used to protect the patient from falling from a bed or chair. The least restrictive form of protective device shall be used which affords the patient the greatest possible degree of mobility. In no case shall a locking device be used.]

b. [Physical restraint.] Restraints that require lock and key shall not be used. [In an emergency, restraints may be used temporarily, but in no case for a period to exceed twelve (12) hours.]

c. Restraints shall be applied only by appropriately trained

personnel [trained in the proper application and observation of this equipment. Restraints shall be checked at least every one-half (1/2) hour and released at least ten (10) minutes every two (2) hours. The checks and releases of restraints shall be recorded in the patient's medical record as they are completed. Such reports shall document the rationale or justification for the use of the procedure, a description of the specific procedures employed, and the physician's order. Restraints shall be used only as a therapeutic measure to prevent the patient from causing physical harm to self or others].

d. Restraints shall not be used as a punishment, as discipline, as a convenience for the staff, or as a mechanism to produce regression. [Restraints shall be comfortable and easily removed in case of an emergency.

e. Chemical restraints. Chemical restraints shall not be used as punishment, for the convenience of the staff, as a substitute for programs, or in quantities that interfere with the patient's habilitation.]

### 5. Infection control and communicable diseases.

a. There shall be written infection control policies, which are consistent with the Centers for Disease Control guidelines including:

(i) Policies which address the prevention of disease transmission to and from patients, visitors and employees, including:

i. Universal blood and body fluid precautions;

ii. Precautions for infections which can be transmitted by the airborne route; and

iii. Work restrictions for employees with infectious diseases.

(ii) Policies which address the cleaning, disinfection, and sterilization methods used for equipment and the environment.

b. The facility shall provide in-service education programs on the cause, effect, transmission, prevention and elimination of infections for all personnel responsible for direct patient care.

c. Sharp wastes.

(i) Sharp wastes, including needles, scalpels, razors, or other sharp instruments used for patient care procedures, shall be segregated from other wastes and placed in puncture resistant containers immediately after use.

(ii) Needles shall not be recapped by hand, purposely bent or broken, or otherwise manipulated by hand.

(iii) The containers of sharp wastes shall either be incinerated on or off site, or be rendered nonhazardous by a technology of equal or superior efficacy, which is approved by both the Cabinet for Health Services [Human Resources] and the Natural Resources and Environmental Protection Cabinet.

d. Disposable waste.

(i) All disposable waste shall be placed in suitable bags or closed containers so as to prevent leakage or spillage, and shall be handled, stored, and disposed of in such a way as to minimize direct exposure of personnel to waste materials.

(ii) The facility shall establish specific written policies regarding handling and disposal of all wastes.

(iii) The following wastes shall be disposed of by incineration, autoclaved before disposal, or carefully poured down a drain connected to a sanitary sewer: blood, blood specimens, used blood tubes, or blood products.

(iv) Any wastes conveyed to a sanitary sewer shall comply with applicable federal, state, and local pretreatment regulations [pursuant to 40 CFR 403 and 401 KAR 5:055, Section 9].

e. Patients infected with the following diseases shall not be admitted to the facility: anthrax, campylobacteriosis, cholera, diphtheria, hepatitis A, measles, pertussis, plague, poliomyelitis, rabies (human), rubella, salmonellosis, shigellosis, typhoid fever, yersiniosis, brucellosis, giardiasis, leprosy, psittacosis, Q fever, tularemia, and typhus.

f. A facility may admit a noninfectious tuberculosis patient under continuing medical supervision for his tuberculosis disease.

g. Patients with active tuberculosis may be admitted to the facility whose isolation facilities and procedures have been specifically approved by the cabinet.

h. If, after admission, a patient is suspected of having a communicable disease that would endanger the health and welfare of other patients the administrator shall assure that a physician is contacted and that appropriate measures are taken on behalf of the patient with the communicable disease and the other patients.

(6) Diagnostic services. The facility shall have provisions for obtaining required clinical laboratory, x-ray and other diagnostic services. Laboratory services may be obtained from a laboratory which is part of a licensed hospital or a laboratory licensed pursuant to KRS 333.030 and any administrative regulations promulgated thereunder. Radiology services shall be obtained from a service licensed or registered pursuant to KRS 211.842 to 211.852 and any administrative regulations promulgated thereunder. If the facility provides its own diagnostic services, the service shall meet the applicable laws and administrative regulations. All diagnostic services shall be provided only on the request of a physician. The physician shall be notified promptly of the test results. Arrangements shall be made for the transportation of patients, if necessary, to and from the source of service. Simple tests, such as those customarily done by nursing personnel for diabetic patients may be done in the facility. All reports shall be included in the medical record.

(7) Dental services. The facility shall assist patients to obtain regular and emergency dental care. Provision for dental care: patients shall be assisted to obtain regular and emergency dental care. An advisory dentist shall provide consultation, participate in in-service education, recommend policies concerning oral hygiene, and shall be available in case of emergency. The facility, when necessary, shall arrange for the patient to be transported to the dentist's office. Nursing personnel shall assist the patient to carry out the dentist's recommendations.

(8) Social services.

(a) Provision for medically related social needs. The medically related social needs of the patient shall be identified, and services provided to meet them, in admission of the patient, during his treatment and care in the facility, and in planning for his discharge.

1. As a part of the process of evaluating a patient's need for services in a facility and whether the facility can offer appropriate care, emotional and social factors shall be considered in relation to medical and nursing requirements.

2. As soon as possible after admission, there shall be an evaluation, based on medical, nursing and social factors, of the probable duration of the patient's need for care and a plan shall be formulated and recorded for providing such care.

3. Where there are indications that financial help will be needed, arrangements shall be made promptly for referral to an appropriate agency.

4. Social and emotional factors related to the patient's illness, to his response to treatment and to his adjustment to care in the facility shall be recognized and appropriate action shall be taken when necessary to obtain casework services to assist in resolving problems in these areas.

5. Knowledge of the patient's home situation, financial resources, community resources available to assist him, and pertinent information related to his medical and nursing requirements shall be used in making decisions regarding his discharge from the facility.

(b) Confidentiality of social data. Pertinent social data, and information about personal and family problems related to the patient's illness and care shall be made available only to the attending physician, appropriate members of the nursing staff, and other key personnel who are directly involved in the patient's care, or to recognized health or welfare agencies. There shall be appropriate policies and procedures for assuring the confidentiality of such information.

1. The staff member responsible for social services shall participate in clinical staff conferences and confer with the attending physician at intervals during the patient's stay in the facility, and there shall be evidence in the record of such conferences.

2. The staff member and nurses responsible for the patient's care shall confer frequently and there shall be evidence of effective working relationships between them.

3. Records of pertinent social information and of action taken to meet social needs shall be maintained for each patient. Signed social service summaries shall be entered promptly in the patient's medical record for the benefit of all staff involved in the care of the patient.

(9) Patient activities. Activities suited to the needs and interests of patients shall be provided as an important adjunct to the active treatment program and to encourage restoration to self-care and resumption of normal activities. Provision shall be made for purposeful activities which are suited to the needs and interests of patients.

(a) The activity leader shall use, to the fullest possible extent, community, social and recreational opportunities.

(b) Patients shall be encouraged but not forced to participate in such activities. Suitable activities are provided for patients unable to leave their rooms.

(c) Patients who are able and who wish to do so shall be assisted to attend religious services.

(d) Patients' request to see their clergymen shall be honored and space shall be provided for privacy during visits.

(e) Visiting hours shall be flexible and posted to permit and encourage visiting friends and relatives.

(f) The facility shall make available a variety of supplies and equipment adequate to satisfy the individual interests of patients. Examples of such supplies and equipment are: books and magazines, daily newspapers, games, stationery, radio and television and the like.

(10) Residential services.

(a) Dietary services. The facility shall provide or contract for food service to meet the dietary needs of the patients including modified diets or dietary restrictions as prescribed by the attending physician or advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8). When a facility contracts for food service with an outside food management company, the company shall provide a qualified dietician on a full-time, part-time or consultant basis to the facility. The qualified dietician shall have continuing liaison with the medical and nursing staff of the facility for recommendations on dietetic policies affecting patient care. The company shall comply with all of the appropriate requirements for dietary services in this administrative regulation.

1. Therapeutic diets. If the designated person responsible for food service is not a qualified dietician or nutritionist, consultation by a qualified dietician or qualified nutritionist shall be provided.

2. Dietary staffing. There shall be sufficient food service personnel employed and their working hours, schedules of hours, on duty and days off shall be posted. If any food service personnel are assigned duties outside the dietary department, the duties shall not interfere with the sanitation, safety or time required for regular dietary assignments.

3. Menu planning.

a. Menus shall be planned, written and rotated to avoid repetition. Nutrition needs shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex and activity, and in accordance with physician's orders.

b. Meals shall correspond with the posted menu. Menus must be planned and posted one (1) week in advance. When changes in the menu are necessary, substitutions shall provide equal nutritive value and the changes shall be recorded on the menu and all menus shall be kept on file for thirty (30) days.

c. The daily menu shall include daily diet for all modified diets served within the facility based on an approved diet manual. The diet manual shall be a current manual with copies available in the dietary department that has the approval of the professional staff of the facility. The diet manual shall indicate nutritional deficiencies of any diet. The dietician shall correlate and integrate the dietary aspects of the patient care with the patient and patient's chart through such

methods as patient instruction, recording diet histories, and participation in rounds and conference.

4. Food preparation and storage.

a. There shall be at least a three (3) day supply of food to prepare well-balanced palatable meals. Records of food purchased for preparation shall be on file for thirty (30) days.

b. Food shall be prepared with consideration for any individual dietary requirement. Modified diets, nutrient concentrates and supplements shall be given only on the written orders of a physician or advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8).

c. At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the substantial evening meal and breakfast. Between-meal snacks to include an evening snack before bedtime shall be offered to all patients. Adjustments shall be made when medically indicated.

d. Foods shall be prepared by methods that conserve nutritive value, flavor and appearance and shall be attractively served at the proper temperatures, and in a form to meet the individual needs. A file of tested recipes, adjusted to appropriate yield shall be maintained. Food shall be cut, chopped or ground to meet individual needs. If a patient refuses foods served, nutritional substitutions shall be offered.

e. All opened containers or left over food items shall be covered and dated when refrigerated.

5. Serving of food. When a patient cannot be served in the dining room, trays shall be provided for bedfast patients and shall rest on firm supports such as overbed tables. Sturdy tray stands of proper height shall be provided for patients able to be out of bed.

a. Correct positioning of the patient to receive his tray shall be the responsibility of the direct patient care staff. Patients requiring help in eating shall be assisted within a reasonable length of time.

b. Adaptive self-help devices shall be provided to contribute to the patient's independence in eating.

6. Sanitation. All facilities shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and 902 KAR 45:005 (~~Kentucky's Food Service Establishment Act and Food Service Code~~).

(b) Housekeeping and maintenance services.

1. The facility shall maintain a clean and safe facility free of unpleasant odors. Odors shall be eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans and other obvious sources.

2. An adequate supply of clean linen shall be on hand at all times. Soiled clothing and linens shall receive immediate attention and shall not be allowed to accumulate. Clothing or bedding used by one (1) patient shall not be used by another until it has been laundered or dry cleaned.

3. Soiled linen shall be placed in washable or disposable containers, transported in a sanitary manner and stored in separate, well-ventilated areas in a manner to prevent contamination and odors. Equipment or areas used to transport or store soiled linen shall not be used for handling or storing of clean linen.

4. Soiled linen shall be sorted and laundered in the soiled linen room in the laundry area. Hand-washing facilities with hot and cold water, soap dispenser and paper towels shall be provided in the laundry area.

5. Clean linen shall be sorted, dried, ironed, folded, transported, stored and distributed in a sanitary manner.

6. Clean linen shall be stored in clean linen closets on each floor, close to the nurses' station.

7. Personal laundry of patients or staff shall be collected, transported, sorted, washed and dried in a sanitary manner, separate from bed linens.

8. Patients' personal clothing shall be laundered as often as is necessary. Laundering of patients' personal clothing shall be the responsibility of the facility unless the patient or the patient's family

accepts this responsibility. Patient's personal clothing laundered by or through the facility shall be marked to identify the patient-owner and returned to the correct patient.

9. Maintenance. The premises shall be well kept and in good repair. Requirements shall include:

a. The facility shall insure that the grounds are well kept and the exterior of the building, including the sidewalks, steps, porches, ramps and fences are in good repair.

b. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing and electrical fixtures shall be in good repair. Windows and doors shall be screened.

c. Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

d. A pest control program shall be in operation in the facility. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. The compounds shall be stored under lock.

(c) Room accommodations.

1. Each patient shall be provided a standard size bed or the equivalent at least thirty-six (36) inches wide, equipped with substantial springs, a clean comfortable mattress, a mattress cover, two (2) sheets and a pillow, and such bed covering as is required to keep the patients comfortable. Rubber or other impervious sheets shall be placed over the mattress cover whenever necessary. Beds occupied by patients shall be placed so that no patient may experience discomfort because of proximity to radiators, heat outlets, or by exposure to drafts.

2. The facility shall provide window coverings, bedside tables with reading lamps (if appropriate), comfortable chairs, chest or dressers with mirrors, a night light, and storage space for clothing and other possessions.

3. Patients shall not be housed in unapproved rooms or unapproved detached buildings.

4. Basement rooms shall not be used for sleeping rooms for patients.

5. Patients may have personal items and furniture when it is physically feasible.

6. There shall be a sufficient number of tables provided that can be rolled over a patient's bed or be placed next to a bed to serve patients who cannot eat in the dining room.

7. Each living room or lounge area and recreation area shall have an adequate number of reading lamps, and tables and chairs or settees of sound construction and satisfactory design.

8. Dining room furnishings shall be adequate in number, well constructed and of satisfactory design for the patients.

9. Each patient shall be permitted to have his own radio and television set in his room unless it interferes with or is disturbing to other patients.

TIMOTHY L. VENO, Inspector General

JOHN MORSE, Secretary

APPROVED BY AGENCY: June 10, 1997

FILED WITH LRC: June 11, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1997, at 9 a.m., at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by July 14, 1997, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made, in which case the person requesting the transcript shall be responsible for payment. If you do not wish to attend the public hearing, you may submit written comments on the

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proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mae B. Lewis, Administrative Specialist Principal, Office of the Counsel, Cabinet for Health Services, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900, Fax: (502) 564-7573.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ralph Von Derau

(1) Type and number of entities affected: There are presently three (3) licensed skilled nursing facilities.

(2) Direct and indirect costs or savings to those affected:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments addressing this issue were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments addressing this issue were received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No additional reporting requirements imposed.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No direct or indirect costs should be associated with this program beyond printing this new regulation.

1. First year: \$500 for printing regulation.

2. Continuing costs or savings: No additional costs or savings, since reprinting of regulations is provided for in the continuing budget.

3. Additional factors increasing or decreasing costs: No additional factors.

(b) Reporting and paperwork requirements: No additional paperwork.

(4) Assessment of anticipated effect on state and local revenues: No effect.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No public comments addressing this issue were received.

(b) Kentucky: No public comments addressing this issue were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS Chapter 216B mandates that minimum standards be established for licensure.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: These are minimum health care standards intended to protect the public.

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication. No conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions?

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. This is a licensure program and, as such, applies to all licensed services.

### CABINET FOR HEALTH SERVICES Office of Inspector General (Amendment)

902 KAR 20:036. Operation and services; personal care homes.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990~~[(4), (2)]~~

STATUTORY AUTHORITY: KRS 216B.042 ~~[216B.040]~~, 216B.105, 314.011(8), 314.042(8), 320.240(14), EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 ~~[216B.040]~~ and 216B.105 mandate that the Cabinet for Health Services ~~[Human Resources]~~ regulate health facilities and health services. This administrative regulation provides for the licensure requirements for the operation of personal care homes and the services to be provided by personal care homes. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Office of Inspector General and its programs under the Cabinet for Health Services.

Section 1. Definitions. (1) "Activities of daily living" means activities of self-help (example: being able to feed, bathe and/or dress oneself), communication (example: being able to place phone calls, write letters and understanding instructions), and socialization (example: being able to shop, being considerate of others, working with others and participating in activities).

(2) "Activities services" means social and recreation opportunities to stimulate physical and mental abilities, encourage and develop a sense of usefulness and self respect and encourage participation in a variety of activities.

(3) "Administrator" means a person who:

(a) Has sufficient education to: maintain adequate records; submit reports requested by the board; and interpret any written material related to all phases of facility operation and resident's care. The administrator must: be literate; be a high school graduate or have passed the General Education Development Test; be twenty-one (21) years of age or older; or

(b) Is licensed as a nursing home administrator as provided by KRS 216A.080.

(4) "Ambulatory" means able to walk without assistance.

~~(5) "Board" means the Commission for Health Economics Control in Kentucky.~~

~~(6)]~~ "License" means an authorization issued by the Certificate of Need and Licensure Board for the purpose of operating a personal care home and offering personal care services.

~~(6) [(7)]~~ "Mobile nonambulatory" means unable to walk without assistance, but able to move from place to place, and self exit the building, with the use of a device such as a walker, crutches, or a wheelchair and capable of independent bed-to-chair transfer or bed-to-chair transfer with minimal assistance.

~~(7) [(8)]~~ "Nonambulatory" means unable to walk without assistance.

~~(8) [(9)]~~ "Nonmobile" means unable to move from place to place.

~~[(10)] "Qualified dietitian or nutritionist" means a person who:~~

~~(a) Has a Bachelor of Science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietitian by ADA; or~~

~~(b) Has a masters degree in nutrition and is a member of ADA or is eligible for registration by ADA; or~~

~~(e) Has a Bachelor of Science degree in home economics and three (3) years of work experience with a registered dietician.~~

~~(9) [(11)] "Personal care" means services to help residents to achieve and maintain good personal hygiene including but not limited to: assistance with bathing, shaving, cleaning and trimming of fingernails and toenails, cleaning of the mouth and teeth, washing, grooming and cutting of hair.~~

~~[(12)] "Protective devices" means devices that are designed to protect a person from falling, to include side rails, safety vest or safety belt.~~

(10) "Qualified dietician or nutritionist" means a person who:

(a) Has a bachelor of science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietician by ADA; or

(b) Has a masters degree in nutrition and is a member of ADA or is eligible for registration by ADA; or

(c) Has a bachelor of science degree in home economics and three (3) years of work experience with a registered dietician.

~~(11) [(13)] "Residential care" means services which include but are not limited to: room accommodations, housekeeping and maintenance services, dietary services and laundering of resident's clothing and bed linens.~~

~~(12) [(14)] "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body.~~

Section 2. Scope of Operations and Services. Personal care homes are establishments with permanent facilities including resident beds. Services provided include continuous supervision of residents, basic health and health-related services, personal care services, residential care services and social and recreational activities. Residents in a personal care home must be sixteen (16) years of age or older and be ambulatory or mobile nonambulatory, and are able to manage most of the activities of daily living. Persons who are nonambulatory or nonmobile shall not be eligible for residence in a personal care home.

Section 3. Administration and Operation. (1) Licensee.

(a) The licensee shall be legally responsible for the operation of the personal care home and for compliance with federal, state and local laws and regulations pertaining to the operation of the home.

(b) The licensee shall establish policies for the administration and operation of the service.

(2) Administrator. All personal care facilities shall have an administrator who shall be responsible for the operation of the facility and shall delegate such responsibility in his or her absence.

(3) Admission.

(a) Personal care homes shall admit only persons who are sixteen (16) years of age or older and who are ambulatory or mobile nonambulatory and whose care needs do not exceed the capability of the home. Persons who are nonambulatory or nonmobile shall not be eligible for admission to a personal care home.

(b) No personal care home may care or be responsible for the care of more residents than the capacity indicated on the license, regardless of where housed.

(c) Upon admission the resident and a responsible member of his family or committee shall be informed in writing of the established policies of the home to include but not be limited to fees, reimbursement, visitation rights during serious illness, visiting hours, type of diets offered and services rendered.

(d) Upon admission each resident shall have a complete medical evaluation including medical history, physical examination and diagnosis (may be copy of discharge summary or health and physical report from physician, hospital or other health care facility if done

within fourteen (14) days prior to admission).

(4) Patient rights. Patient rights shall be provided for pursuant to KRS 216.510 to 216.525.

(5) Adult and child protection. Personal care homes shall have written policies which assure the reporting of cases of abuse, neglect or exploitation of adults and children ~~[to the Cabinet for Human Resources]~~ pursuant to KRS Chapters 209 and 620 ~~[KRS 409.335]~~.

(6) Transfer and discharge. Personal care homes shall comply with the requirements of 900 KAR 2:050 when transferring or discharging residents [Transfer procedures and agreements].

(a) Personal care homes shall have written transfer procedures and agreements for the transfer of residents to other health care facilities which can provide a level of inpatient care not provided by the personal care home. Any facility which does not have a transfer agreement in effect but has attempted in good faith to enter into such an agreement shall be considered to be in compliance with the licensure requirement. The transfer procedures and agreements shall specify the responsibilities each institution assumes in the transfer of patients and establish responsibility for notifying the other institution promptly of the impending transfer of a patient and arrange for appropriate and safe transportation.

(b) The administrator shall initiate transfer through the resident's physician ~~and~~ for appropriate agencies when the resident's condition is not within the scope of services of a personal care home.

(c) In the event of transfer to another health care facility a current summary of the resident's medical record shall accompany the resident. When a transfer is to another level of care within the same facility a copy of the resident's record or current summary thereof shall accompany the resident.

(7) Tuberculosis Testing. All employees and residents shall be tested for tuberculosis in accordance with the provisions of 902 KAR 20:200, Tuberculosis testing in long term care facilities.

(8) Personnel.

(a) Current employee records shall be maintained and shall include a record of each employee's training and experience, evidence of current licensure, registration or certification where required by law, health records and evaluation of performance, along with employee's name, address and social security number.

(b) All employees must be of an age in conformity with state laws.

(c) Any employee contracting an infectious disease shall not appear at work until the infectious disease can no longer be transmitted.

(d) All dietary employees must wear hair nets.

(e) In-service training. All personal care home employees shall receive in-service training to correspond with the duties of their respective jobs. Documentation of in-service training shall be maintained in the employee's record and shall include: who gave the training, date and period of time training was given and a summary of what the training consisted of. In-service training shall include but not be limited to the following:

1. Policies of the facility in regard to the performance of their duties;
2. Services provided by the facility;
3. Recordkeeping procedures;
4. Procedures for the reporting of cases of adult and child abuse, neglect or exploitation ~~[to the Cabinet for Human Resources]~~ pursuant to KRS Chapters 209 and 620 ~~[KRS 409.335]~~;
5. Patient rights as provided for in KRS 216.510 to 216.525;
6. Methods of assisting patients to achieve maximum abilities in activities of daily living;
7. Procedures for the proper application of physical restraints;
8. Procedures for maintaining a clean, healthful and pleasant environment;
9. The aging process;
10. The emotional problems of illness;
11. Use of medication; and
12. Therapeutic diets.

(f) Staffing requirements.

1. The number of personnel required shall be based on: the number of patients; amount and kind of personal care, supervision, and program needed to meet the needs of the residents as determined by the definitions of care and services required in this administrative regulation.

2. If the staff to [4] resident ratio does not meet the needs of the residents, the Division for Licensing and Regulation shall determine and inform the administrator in writing how many additional personnel are to be added and of what job classification and shall give the basis for this determination.

3. The administrator shall designate a person for each of the following areas who will be primarily responsible for the coordination and provisions of services (personnel may be required to perform combined duties):

- a. Recordkeeping;
- b. Basic health and health related services; and
- c. Activity services.

4. Each facility shall have a full-time person designated by the administrator, responsible for the total food service operation of the facility and who shall be on duty a minimum of thirty-five (35) hours each week.

5. One (1) attendant shall be awake and on duty on each floor in the facility at all times.

(9) Medical records. The person in charge of medical records shall assure that a complete medical record shall be kept for each resident with all entries current, dated and signed. Entries should be made in ink, ballpoint, or typed. Each record shall include the following:

(a) Identification information, including:

- 1. Resident's name;
- 2. Social Security, Medicare and Medical Assistance identification number (if appropriate);
- 3. Marital status;
- 4. Birthdate;
- 5. Age;
- 6. Sex;
- 7. Home address;
- 8. Religion and personal clergyman, if any (with consent of resident);
- 9. Attending physician, dentist and podiatrist, if any; address and phone number for each one;
- 10. Next of kin ~~and/or~~ responsible person, address and telephone number;
- 11. Date of admission and discharge;
- 12. In the event of transfer, a copy of the summary of resident's records; and
- 13. Monthly recording of the resident's weight.

(b) If admitted from another facility a discharge summary or transfer summary.

(c) Admitting medical evaluation.

(d) Physician's report on annual medical evaluation of the resident.

(e) Physician progress notes indicating changes in resident's condition, at time of each visit by the physician and consultant.

(f) ~~Physician~~ Orders for medication or therapeutic services.

(g) Nurses' or staff notes indicating changes in resident's condition as they occur.

(h) Reports of accidents or acute illnesses of any resident.

(i) Reports of social services, dental, laboratory, x-ray and special reports of consultants or therapists when the resident receives these services.

(j) Medication and treatment sheets including all medications, treatments and special procedures performed indicating date and time. Entries shall be initiated by the personnel rendering treatment or administering medication.

(k) Reports of the use of physical restraints, the procedures used,

and the checks and releases of physical restraints.

(l) A record of resident's discharge destination.

(10) Retention of records. After death or discharge the completed medical record shall be placed in an inactive file and retained for five (5) years, or in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

Section 4. Provision of Services. (1) Basic health and health related services. All personal care homes shall provide basic health and health related services including: continuous supervision and monitoring of the resident to assure that the resident's health care needs are being met, supervision of self administration of medications, storage and control of medications, when necessary, and making arrangements for obtaining therapeutic services ordered by the resident's physician which are not available in the facility. All personal care homes shall meet the following requirements relating to the provision of basic health and health related services:

(a) The person in charge of the facility shall be responsible for obtaining medical care by a licensed physician promptly in cases of accident or acute illness of any resident. Such instances shall be recorded in the resident's medical record.

(b) Medications or therapeutic services shall not be administered or provided to any resident except on the order of a licensed physician or advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8), or therapeutically-certified optometrist as authorized in KRS 320.240(14). Administration of all medications and provisions of therapeutic services shall be recorded in the resident's medical record.

(c) If orders are received by telephone ~~from a physician~~, the order shall be recorded on the individual's medical record and signed by the physician or advanced registered nurse practitioner or therapeutically-certified optometrist within fourteen (14) days.

(d) A written report of any incident or accident involving a resident (including medication errors or drug reactions), visitor or staff shall be made and signed by the administrator, and any staff member who may have been witness to the incident. The report shall be filed in an incident file.

(e) Controlled substances. No home shall keep any controlled substances or other habit forming drugs, hypodermic needles, or syringes except under the specific direction of a physician. Controlled substances shall be kept under double lock (i.e., in a locked box in a locked cabinet). There shall be a controlled substances bound record book with numbered pages, in which is recorded the name of the resident; the date, time, kind, dosage, and method of administration of all controlled substances; the name of the physician who prescribed the medications; and the name of the nurse who administered it, or staff who supervised the self-administration. In addition, there shall be a recorded and signed Schedule II controlled substances count daily, and Schedule III, IV and V controlled substances count once per week by those persons who have access to controlled substances. All controlled substances which are left over after the discharge or death of the resident shall be destroyed in accordance with 21 [KRS 218A.230, or] CFR [24]1307.21[, or sent by registered mail to the Controlled Substances Enforcement Branch of the Kentucky Cabinet for Human Resources].

(f) All medicines must be plainly labeled with the resident's name, the name of the drug, strength, name of pharmacy, prescription number, date, physician name, caution statements and directions for use except where accepted modified unit dose systems conforming to federal and state laws are used. All medicines kept by the home shall be kept in a locked place and the persons in charge shall be responsible for giving the medicines and keeping them under lock and key. Medications requiring refrigeration must be kept in a separate locked box of adequate size in the refrigerator in the medication area. Drugs for external use must be stored separately from those administered by mouth and injection. Provisions must also be made for the locked separate storage of medications of deceased and discharged

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patients until such medication is surrendered or destroyed in accordance with existing federal and state laws and regulations.

(g) If a resident manifests persistent behavior that may require psychiatric treatment, the resident's physician shall be notified in order to evaluate and direct the resident's care. If the resident's condition does not improve enough for his continued stay in a personal care facility, the physician shall initiate transfer of the resident to an appropriate facility as soon as possible.

(h) Use of restraints ~~[or protective devices]~~.

1. No ~~[form of]~~ restraints ~~[or protective devices]~~ shall be used except as permitted by KRS 216.515(6). ~~[under written orders of the attending physician.]~~

~~[1. Protective devices. Protective devices may be used to protect the resident from falling from a bed or chair. The least restrictive form of protective device shall be used which affords the resident the greatest possible degree of mobility. In no case shall a locking device be used.]~~

2. ~~[Physical restraint.]~~ Restraints that require lock and key shall not be used. ~~[In an emergency, restraints may be used temporarily, but in no case for a period to exceed twelve (12) hours.]~~

3. Restraints shall be applied only by appropriately trained personnel. ~~[trained in the proper application and observation of this equipment. Restraints shall be checked at least every one-half (1/2) hour and released at least ten (10) minutes every two (2) hours. The checks and releases of restraints shall be recorded in the resident's record as they are completed. Such records shall document the rationale or justification for the use of the procedure, a description of the specific procedures employed, and the physician's order. Restraints shall be used only as a therapeutic measure to prevent the patient from causing physical harm to self or others.]~~

4. Restraints shall not be used as a punishment, as discipline, as a convenience for the staff, or as a mechanism to produce regression. ~~[Restraints shall be comfortable and easily removed in case of an emergency.]~~

3. ~~Chemical restraints. Chemical restraints shall not be used as punishment, for the convenience of the staff, as a substitute for programs, or in quantities that interfere with the patient's habilitation.~~

~~(i) Special purpose areas for the protection or confinement of a resident shall not be permitted unless approved in writing by the Division of Licensure and Regulation of the Cabinet of Human Resources with specification of use of the area.]~~

~~(i) [(i)]~~ Each resident shall have an annual medical evaluation by a physician. The results of this evaluation shall be recorded in the resident's medical record.

~~(i) [(i)]~~ Communicable diseases.

~~1. No personal care home shall knowingly admit a person suffering from a communicable disease which is reportable to the health department, except a (noninfectious) tuberculosis patient under continuing medical supervision for his tuberculosis disease; provided, however, that a "facility" may admit persons having Acquired Immune Deficiency Syndrome (AIDS) provided that the following conditions are met:~~

~~a. Staff of facility have completed a training program approved by the cabinet.~~

~~b. The facility has developed strict written procedures and protocols for staff to follow in order to avoid exposure to blood or body fluids of the AIDS patient; and to follow if such an exposure occurs.~~

~~c. The facility must apprise the public and the residents of the facility, that AIDS patients are admissible to that facility; but identifying information on AIDS patients shall not be disclosed except as provided by law or administrative regulation of the Cabinet for Human Resources.~~

2. ~~If, after admission,~~ a resident or prospective resident is suspected or known to have (if having) a communicable disease for which a reasonable probability of disease transmission exists in the personal care home, ~~[that would endanger the health and welfare of~~

~~other residents]~~ the administrator shall assure that a physician is contacted and that appropriate measures are taken on behalf of the resident with the communicable disease and the other residents.

(2) Residential care services. All personal care homes shall provide residential care services to all residents including: room accommodations, housekeeping and maintenance services, and dietary services. All personal care homes shall meet the following requirements relating to the provisions of residential care services:

(a) Room accommodations.

1. Each resident shall be provided a bed equipped with substantial spring, a clean comfortable mattress, a mattress cover, two (2) sheets and a pillow, and such bed covering as is required to keep the residents comfortable. Rubber or other impervious sheets shall be placed over the mattress cover whenever necessary. Beds occupied by residents shall be placed so that no resident may experience discomfort because of proximity to radiators, heat outlets, or by exposure to drafts.

2. The home shall provide window coverings, bedside tables with reading lamps (if appropriate), comfortable chairs, chest or dressers with mirrors and a night light.

3. Residents shall not be housed in unapproved rooms or unapproved detached buildings.

4. Basement rooms shall not be used for sleeping rooms for residents.

5. Residents may have personal items and furniture when it is physically feasible.

(b) Housekeeping and maintenance services.

1. The home shall maintain a clean and safe facility free of unpleasant odors. Odors shall be eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans and other obvious sources.

2. An adequate supply of clean linen should be on hand at all times. Soiled clothing and linens shall receive immediate attention and should not be allowed to accumulate. Clothing or bedding used by one (1) resident shall not be used by another until it has been laundered or dry cleaned.

3. Laundering of resident's normal personal clothing and bed linens. Resident's personal clothing and bed linens shall be laundered by the home as often as is necessary. Resident's personal clothing shall be laundered by the home unless the resident or the resident's family accepts this responsibility. Residents capable of laundering their own personal clothing and wishing to do so may, instead, be provided the facilities to do so. Resident's personal clothing laundered by the facility shall be marked to identify the resident-owner and returned to the correct resident.

4. Safety. The home shall take appropriate precautions to insure safety of residents, visitors and employees.

5. Maintenance. The premises shall be well kept and in good repair. Requirements shall include but not be limited to:

a. The facility shall insure that the grounds are well kept and the exterior of the building and including the sidewalk, steps, porches, ramps and fences are in good repair.

b. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing and electrical fixtures shall be in good repair. Windows and doors shall be screened.

c. Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

d. A pest control program shall be in operation in the facility. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. Care shall be taken to use the least toxic and least flammable effective insecticides and rodenticides. The compounds shall be stored under lock.

(c) Dietary services.

1. Dining area. A dining area shall be available for the residents.

2. Therapeutic diets. If the facility provides therapeutic diets, and

the designated person responsible for food services is not a qualified dietician or nutritionist, consultation by a qualified dietician or qualified nutritionist shall be provided.

3. Menu planning.

a. Menus shall be planned in writing and rotated to avoid repetition. Nutrition needs of residents shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex and activity and in accordance with physician's orders.

b. Meals shall correspond with the posted menu. Menus must be planned and posted one (1) week in advance. When changes in the menu are necessary, substitutions shall provide equal nutritive value and the changes shall be recorded on the menu and menus shall be kept on file for thirty (30) days.

4. Food preparation and storage.

a. There shall be at least a three (3) day supply of food to prepare well balanced palatable meals.

b. Food shall be prepared with consideration for any individual dietary requirement. Modified diets, nutrient concentrates and supplements shall be given only on the written orders of a physician.

c. At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the evening meal and breakfast. Between-meal snacks to include an evening snack before bedtime shall be offered to all residents. Adjustments shall be made when medically contraindicated.

d. Food shall be prepared by methods that conserve nutritive value, flavor, and appearance, and shall be attractively served at the proper temperatures and in a form to meet individual needs. A file of tested recipes, adjusted to appropriate yield, shall be maintained. Food shall be cut, chopped, or ground to meet individual needs. If a resident refuses food served, substitutes shall be offered.

e. All opened containers or leftover food items shall be covered and dated when refrigerated.

f. Ice water must be readily available to the residents at all times.

5. Sanitation. Personal care homes shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and 902 KAR 45:005 (~~Kentucky's Food Service Establishment Act and Food Service Code~~).

(3) Personal care services. All personal care homes shall provide services to assist residents to achieve and maintain good personal hygiene including the level of assistance necessary with:

(a) Washing and bathing of the body to maintain clean skin and freedom from offensive odors. In addition to assistance with washing and bathing, the facility shall provide soap, clean towels, and wash cloths for each resident. Toilet articles such as towels, brushes and combs shall not be used in common.

(b) Shaving.

(c) Cleaning and trimming of fingernails and toenails.

(d) Cleaning of the mouth and teeth to maintain good oral hygiene as well as care of the lips to prevent dryness and cracking. All residents shall be provided with tooth brushes, a dentifrice, and denture containers, when applicable.

(e) Washing, grooming, and cutting of hair.

(4) Activity services.

(a) All personal care homes shall provide social and recreational activities to: stimulate physical and mental abilities to the fullest extent; encourage and develop a sense of usefulness and self respect; prevent, inhibit or correct the development of symptoms of physical and mental regression due to illness or old age, be of sufficient variety that they meet the needs of the various types of residents in the home.

(b) All personal care homes shall meet the following requirements relating to the provision of activity services:

1. Staff. A person designated by the administrator shall be responsible for the activity program. (Volunteer groups may be enlisted to assist with carrying out the activities program.)

2. There shall be a planned activity period each day. The

schedule shall be current and posted.

3. The program shall be planned for group and individual activities, both within and outside of the facility.

4. The person responsible for activities shall maintain a current list of residents on which precautions are noted regarding a resident's condition that might restrict or modify his participation in the program.

5. A living or recreation room and outdoor recreational space shall be provided for residents and their guests.

6. The facility shall provide supplies and equipment for the activities program.

7. Reading materials, radios, games and TV sets shall be provided for the residents.

TIMOTHY L. VENNO, Inspector General

JOHN MORSE, Secretary

APPROVED BY AGENCY: June 9, 1997

FILED WITH LRC: June 12, 1997 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1997, at 9 a.m., at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by July 14, 1997, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made, in which case the person requesting the transcript shall be responsible for payment. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mae B. Lewis, Administrative Specialist Principal, Office of the Counsel, Cabinet for Health Services, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900, Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ralph Von Derau

(1) Type and number of entities affected: There are presently 200 licensed personal care homes.

(2) Direct and indirect costs or savings to those affected:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments addressing this issue were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments addressing this issue were received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No additional reporting requirements imposed.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No direct or indirect costs should be associated with this program beyond printing this new regulation.

1. First year: \$500 for printing regulation.

2. Continuing costs or savings: No additional costs or savings, since reprinting of regulations is provided for in the continuing budget.

3. Additional factors increasing or decreasing costs: No additional factors.

(b) Reporting and paperwork requirements: No additional paperwork.

(4) Assessment of anticipated effect on state and local revenues: No effect.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No public comments addressing this issue were received.

(b) Kentucky: No public comments addressing this issue were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS Chapter 216B mandates that minimum standards be established for licensure.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: These are minimum health care standards intended to protect the public.

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication. No conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions?

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. This is a licensure program and, as such, applies to all licensed services.

**CABINET FOR HEALTH SERVICES**  
**Department for Public Health**  
**Division of Environmental Health**  
**and Community Safety**  
**(Amendment)**

**902 KAR 100:073. Use of radionuclides in the healing arts.**

RELATES TO: KRS 211.842 to 211.852, 211.990(4), 10 CFR 35

STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844, 10 CFR 35, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services. KRS 211.844 authorizes the Cabinet for Health Services [Human Resources] to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation provides requirements and provisions for the use of radioactive material in the healing arts and for issuance of licenses authorizing the medical use of radioactive material; and establishes requirements for specific licensees to possess, use, and transfer radioactive material for medical uses.

Section 1. License Required. (1) A person shall not manufacture, produce, prepare, compound, acquire, receive, possess, use, or transfer radioactive material for medical use except in accordance with a specific license issued by the cabinet, another agreement state or the U.S. Nuclear Regulatory Commission, or as authorized in subsections (2) and (3) of this section. ~~[pursuant to 902 KAR Chapter 100.]~~

(2) Unless prohibited by license condition, an individual may

receive, possess, use, or transfer radioactive material in accordance with the requirements in this administrative regulation under the supervision of an authorized user as provided in Section 8 of this administrative regulation.

(3) An individual may prepare unsealed radioactive material for medical use in accordance with this administrative regulation under the supervision of an authorized nuclear pharmacist or authorized user as described in Section 8 of this administrative regulation, unless prohibited by license condition.

Section 2. License Amendments. A licensee shall apply for and receive a license amendment before:

(1) Using radioactive material for a method or type of medical use not permitted by the license issued under this administrative regulation;

(2) Permitting anyone, except a visiting authorized user or visiting authorized nuclear pharmacist described in Section 10 of this administrative regulation, to work as an authorized user or authorized nuclear pharmacist under the license;

(3) Changing a radiation safety officer or teletherapy physicist;

(4) Ordering radioactive material in excess of the amount, or radionuclide or form different than specified on the license;

(5) Adding to or changing the areas of use or address of use identified in the application or on the license; ~~[and]~~

(6) Changing statements, representations, and procedures which are incorporated into the license; and

(7) Conducting research involving human subjects using radioactive material. The licensee shall submit provisions for implementing the requirements of Section 61(3)(a), (b), and (c) of this administrative regulation with the application for amendment.

Section 3. Notifications. A licensee shall notify the cabinet in writing within thirty (30) days if an authorized user, authorized nuclear pharmacist, radiation safety officer, or teletherapy physicist permanently discontinues performance of duties under the license.

Section 4. As Low as Reasonably Achievable (ALARA) Program.

(1) A licensee shall develop and implement a written program to maintain radiation doses and releases of radioactive material in effluents to unrestricted areas as low as reasonably achievable (ALARA) in accordance with 902 KAR 100:015, Section 2.

(2) To satisfy the requirement of this section:

(a) The management, radiation safety officer, and authorized users shall participate in the establishment, implementation, and operation of the program as required by this administrative regulation or the Radiation Safety Committee; or

(b) For licensees that are not medical institutions, management and authorized users and authorized nuclear pharmacists shall participate in the program as required by the radiation safety officer.

(3) The ALARA Program shall include an annual review by the Radiation Safety Committee for licensees that are medical institutions or management, and the radiation safety officer for licensees that are not medical institutions.

(a) The review shall consist of:

1. Summaries of the types and amounts of radioactive material used;

2. Occupational dose reports; and

3. Continuing education and training for personnel who work with, or in the vicinity of, radioactive material.

(b) The purpose of the review shall be to ensure that individuals make every reasonable effort to maintain occupational doses, doses to the general public, and releases of radioactive material ALARA, taking into account the state of technology and the cost of improvements in relation to benefits.

(4) The licensee shall retain a current written description of the ALARA Program for the duration of the license. The written description shall include:

(a) A commitment by management to keep occupational doses ALARA;

(b) A requirement that the radiation safety officer brief management once each year on the radiation safety program;

(c) Personnel exposure investigational levels that, if exceeded, will initiate a prompt investigation by the radiation safety officer of the cause of the exposure; and ~~[a consideration of actions that may be taken to reduce the probability of recurrence.]~~

(d) Personnel exposure action levels that, if exceeded, will initiate a prompt investigation by the radiation safety officer of the cause of the exposure and a consideration of actions that may be taken to reduce the probability of recurrence.

Section 5. Radiation Safety Officer. (1) A licensee shall appoint a radiation safety officer responsible for implementing the radiation safety program. The licensee, through the radiation safety officer, shall ensure that radiation safety activities are being performed in accordance with approved procedures and regulatory requirements in the daily operation of the licensee's radioactive material program.

(2) The radiation safety officer shall:

(a) Investigate overexposures, misadministrations, accidents, spills, losses, thefts, unauthorized receipts, uses, transfers, disposals, and other deviations from approved radiation safety practice and implement corrective actions as necessary;

(b) Implement written policy and procedures for:

1. Authorizing the purchase of radioactive material;
2. Receiving and opening packages of radioactive material;
3. Storing radioactive material;
4. Keeping an inventory record of radioactive material;
5. Using radioactive material safely;
6. Taking emergency action if control of radioactive material is lost;
7. Performing periodic radiation surveys;
8. Performing checks of survey instruments and other safety equipment;
9. Disposing of radioactive material;
10. Training personnel who work in or frequent areas where radioactive material is used or stored; and
11. Keeping a copy of:

a. Records and reports required by 902 KAR 100:017, 902 KAR 100:019 ~~[902 KAR 100:020]~~, 902 KAR 100:021, 902 KAR 100:035, 902 KAR 100:040, 902 KAR 100:050, 902 KAR 100:052, 902 KAR 100:058, 902 KAR 100:060, 902 KAR 100:070, 902 KAR 100:073, and 902 KAR 100:165;

b. 902 KAR Chapter 100; [This administrative regulation];

c. Each licensing request;

d. License and amendments; and

e. Written policy and procedures required by 902 KAR 100:017, 902 KAR 100:019, ~~[902 KAR 100:020]~~, 902 KAR 100:021, 902 KAR 100:035, 902 KAR 100:040, 902 KAR 100:050, 902 KAR 100:052, 902 KAR 100:058, 902 KAR 100:060, 902 KAR 100:070, 902 KAR 100:073, and 902 KAR 100:165; and

(c) For medical use not sited at a medical institution, approve or disapprove radiation safety program changes with the advice and consent of management prior to submittal to the cabinet for licensing action; or

(d) For medical use sited at a medical institution, assist the Radiation Safety Committee in the performance of its duties.

Section 6. Radiation Safety Committee. A medical institution licensee shall establish a Radiation Safety Committee to oversee the use of radioactive material.

(1) The committee shall meet the following administrative requirements:

(a) Membership shall consist of at least three (3) individuals and shall include:

1. An authorized user of each type of use permitted by the

license;

2. The radiation safety officer;

3. A representative of the nursing service;

4. A representative of management who is not an authorized user or a radiation safety officer; and

5. Other members as the licensee deems appropriate.

(b) The committee shall meet at least once each calendar quarter.

(c) To establish a quorum and to conduct business, one-half (1/2) of the committee's membership shall be present, including the radiation safety officer and the management's representative.

(d) The minutes of each Radiation Safety Committee meeting shall include:

1. Date of the meeting;

2. Members present;

3. Members absent;

4. Summary of deliberations and discussions;

5. Recommended actions and the numerical results of all ballots; and

6. Document reviews required in Sections 4(3) [2] and 6(2) of this administrative regulation.

(e) The committee shall provide each member with a copy of the meeting minutes and retain one (1) copy until the cabinet authorizes its disposition.

(2) To oversee the use of licensed material, the committee shall:

(a) Be responsible for monitoring the institutional program to maintain occupational doses ALARA;

(b) Review, on the basis of safety and with regard to the training and experience standards of this administrative regulation, and approve or disapprove an individual who is to be listed as an authorized user, an authorized nuclear pharmacist, the radiation safety officer, or teletherapy physicist before submitting a license application or request for amendment or renewal;

(c) Review on the basis of safety, and approve or disapprove each proposed method of use of radioactive material;

(d) Review on the basis of safety, and approve with the advice and consent of the radiation safety officer and the management representative, or disapprove procedures and radiation safety program changes prior to submittal to the cabinet for licensing action;

(e) Review quarterly, with the assistance of the radiation safety officer, occupational radiation exposure records of personnel working with radioactive material;

(f) Review quarterly, with the assistance of the radiation safety officer, incidents involving radioactive material with respect to cause and subsequent actions taken;

(g) Review annually, with the assistance of the radiation safety officer, the radioactive material program; and

(h) Establish a table of investigational and action levels for occupational dose that, if exceeded, shall initiate investigations and considerations of action by the radiation safety officer.

Section 7. Statement of Authorities and Responsibilities. (1) A licensee shall provide sufficient authority and organizational freedom to the radiation safety officer and the Radiation Safety Committee to:

(a) Identify radiation safety problems;

(b) Initiate, recommend, or provide solutions; and

(c) Verify implementation of corrective actions.

(2) A licensee shall:

(a) Establish in writing the authorities, duties, responsibilities, and radiation safety activities of the radiation safety officer and the Radiation Safety Committee; and

(b) Retain the current edition of these statements as a record until the cabinet terminates the license.

Section 8. Supervision. (1) A licensee who permits the receipt, possession, use, or transfer of radioactive material by an individual under the supervision of an authorized user as allowed by Section 1 of this administrative regulation shall:

(a) Instruct the supervised individual in the principles of radiation safety appropriate to that individual's use of radioactive material and in the licensee's written quality management program and provide reinstruction as needed;

(b) Require the supervised individual to follow the instructions of the supervising authorized user, follow the written radiation safety and quality management procedures established by the licensee, and comply with the regulations of this administrative regulation and license conditions with respect to the use of radioactive material;

(c) Review the supervised individual's use of radioactive material and [;

~~(e) Review] records kept to reflect this use [of radioactive materials];~~

(d) Require an [the] authorized user to be immediately available to communicate with the supervised individual; and

~~(e) [Require the authorized user to be physically present and available to the supervised individual on one (1) hour notice; and~~

~~(f) Require that only those individuals specifically trained, and designated by the authorized user, shall be permitted to administer radionuclides or radiation to patients or human research subjects.~~

(2) A licensee who permits the receipt, possession, production, preparation, compounding, or transfer of [shall require the supervised individual receiving, possessing, using, or transferring] radioactive material under the supervision of an authorized nuclear pharmacist or authorized user as allowed by Section 1 of this administrative regulation shall [to]:

(a) Instruct the supervised individual in the preparation of radioactive material for medical use and principles of and procedures for radiation safety and in the licensee's written quality management plan, as appropriate to that individual's use or radioactive material;

(b) Require the supervised individual to follow the instructions given in subsection (3)(a) of this section and to comply with the regulations of this administrative regulation and license conditions; and

(c) Require the supervising authorized nuclear pharmacist or physician who is an authorized user to review the work of the supervised individual as it pertains to preparing radioactive material for medical use and the records kept to reflect the work.

~~(3) A licensee that supervises an individual is responsible for the acts and omissions of the supervised individual. [Follow the instructions of the supervising authorized user;~~

~~(b) Follow the procedures established by the radiation safety officer; and~~

~~(e) Comply with 002 KAR Chapter 100 and the license conditions with respect to the use of radioactive material;]~~

Section 9. Quality Management Program. (1) An applicant or licensee shall establish and maintain a written quality management program to provide high confidence that radioactive material or radiation from radioactive material shall be administered as directed by the authorized user, unless otherwise excepted by the cabinet.

(2) The quality management program shall include written policies and procedures to meet the following specific objectives:

(a) Prior to administration, a written directive is prepared for:

1. A teletherapy radiation dose;
2. A gamma stereotactic radiosurgery radiation dose;
3. A brachytherapy radiation dose;
4. An administration of quantities greater than thirty (30) microcuries of either sodium iodide I-125 or I-131; or
5. A therapeutic administration of a radiopharmaceutical, other than sodium iodide I-125 or I-131;

(b) If, because of the patient's or human research subject's condition, a delay in order to provide a written revision to an existing written directive would jeopardize the patient's or human research subject's health, an oral revision to an existing written directive shall be acceptable. The oral revision shall be documented immediately in the patient's or human research subject's record, and a revised

written directive shall be signed by the authorized user within forty-eight (48) hours of the oral revision;

(c) A written revision to an existing written directive may be made for a diagnostic or therapeutic procedure if the revision is dated and signed by an authorized user prior to the administration of the radiopharmaceutical dosage, brachytherapy dose, gamma stereotactic radiosurgery dose, teletherapy dose, or next teletherapy fractional dose;

~~(d) If, because of the emergent nature of the patient's or human research subject's condition, a delay in order to provide a written directive would jeopardize the patient's or human research subject's health, an oral directive shall be acceptable, provided the information contained in the oral directive is documented immediately in the patient's or human research subject's record and a written directive is prepared within twenty-four (24) hours of the oral directive;~~

~~(e) Prior to each administration, the patient's or human research subject's identity shall be verified by more than one (1) method as the individual named in the written directive;~~

~~(f) [(e)] Final plans for treatment and related calculations for brachytherapy, teletherapy, and gamma stereotactic radiosurgery shall be as specified in the respective written directives;~~

~~(g) [(f)] Each administration shall be specified in the written directive; and~~

~~(h) [(g)] An unintended deviation from the written directive shall be identified and evaluated, and appropriate action shall be taken.~~

(3) A licensee shall develop procedures for, and conduct a review of, the quality management program. The review shall include, since the last review, an evaluation of a representative sample of patient and human research subject administrations, recordable events, and misadministrations to verify compliance with the quality management programs.

(a) Reviews shall be conducted at intervals not to exceed twelve (12) months;

(b) Reviews shall be evaluated to determine the effectiveness of the quality management program and, if required, modifications shall be made to meet the objectives of subsection (1) of this section; and

(c) Records of each review shall be retained, including the evaluations and findings, for three (3) years. The records shall be in an auditable form.

(4) A licensee shall evaluate and respond, within thirty (30) days after discovery of the recordable event, to each recordable event. The licensee shall:

(a) Assemble relevant facts, including the cause;

(b) Identify corrective action required to prevent recurrence; and

(c) Retain a record of the relevant facts and corrective action taken for three (3) years. The records shall be in an auditable form.

(5) If a written directive is required in subsection (1)(a) of this section, the licensee shall retain the written directive and a record of each administered radiation dose or radiopharmaceutical dosage for three (3) years after the date of administration. The written directive shall be in an auditable form.

(6) A licensee shall modify the quality management program to increase the program's efficiency if the program's effectiveness is not decreased. The licensee shall furnish the modification to the Radiation Control Program [Branch] within thirty (30) days after the modification has been made.

(7) An applicant for a new license shall submit to the Radiation Control Program [Branch] a quality management program as part of the application for a license, and implement the program upon issuance of the license [by the Radiation Control Branch].

~~(8) An existing licensee shall submit to the Radiation Control Branch, by December 31, 1994, a written certification that the quality management program has been implemented and a copy of the program].~~

Section 10. Visiting Authorized User and Visiting Authorized Nuclear Pharmacist. (1) A licensee may permit a visiting authorized

user or visiting authorized nuclear pharmacist to use licensed material for medical use under the terms of the licensee's license for sixty (60) days each year if:

(a) The visiting authorized user has the prior written permission of the licensee's management and, if the use occurs on behalf of an institution, the institution's Radiation Safety Committee;

(b) The licensee has a copy of the cabinet, another agreement state, or U.S. Nuclear Regulatory Commission license that identifies the visiting authorized user by name as an authorized user for medical use or the visiting authorized nuclear pharmacist as an authorized nuclear pharmacist for nuclear pharmacy use. The supervising authorized user need not be present for each use of radioactive material; and

(c) Only those procedures for which the visiting authorized user or visiting authorized nuclear pharmacist is specifically authorized by the cabinet, another agreement state, or U.S. Nuclear Regulatory Commission license are performed by that individual.

(2) A licensee need not apply for a license amendment in order to permit a visiting authorized user or visiting authorized nuclear pharmacist to use licensed material as described in this section.

(3) A licensee shall retain copies of the records specified in this section for five (5) years from the date of the last visit.

Section 11. Mobile Nuclear Medicine Service Administrative Requirements. (1) The cabinet shall license mobile nuclear medicine services in accordance with this administrative regulation and applicable requirements of 902 KAR 100:012, 902 KAR 100:015, 902 KAR 100:019 ~~[400:020]~~, 902 KAR 100:021, 902 KAR 100:035, 902 KAR 100:040, 902 KAR 100:050, 902 KAR 100:060, 902 KAR 100:070, 902 KAR 100:073, and 902 KAR 100:165 ~~[400:016 to serve clients not licensed for medical use by the cabinet]~~.

(2) Mobile nuclear medicine service licensees shall retain for three (3) years after the last provision of service a letter signed by the management of each location where services are rendered that authorizes use of radioactive material.

(3) A mobile nuclear medicine service shall not have radioactive material delivered directly from the manufacturer or the distributor to the client's address of use unless the client is licensed by the cabinet.

(4) If a mobile nuclear medicine service provides services to a client licensed by the cabinet to provide the same services, the client is responsible for:

(a) Assuring that services are conducted in accordance with 902 KAR Chapter 100 and the terms and conditions of the client's license; and

(b) Maintaining records required by 902 KAR Chapter 100 and conditions of the license.

Section 12. Notifications, Records and Reports of Misadministrations. (1)(a) If a misadministration occurs, the licensee shall notify the:

1. Cabinet by telephone no later than the next calendar day after discovery of the misadministration;

2. Referring physician of the affected individual receiving the misadministration ~~[patient]~~; and

3. Individual ~~[Patient]~~ or a responsible relative or guardian, unless:

a. The referring physician agrees to inform the individual ~~[patient]~~; or

b. The referring physician believes, based on medical judgment, that telling the individual ~~[patient]~~ or the individual's ~~[patient's]~~ responsible relative or guardian may be harmful to one or the other.

(b) Notifications of individuals in paragraph (a)2 and 3 of this subsection shall be made within twenty-four (24) hours after the licensee discovers the misadministration. If the referring physician, individual ~~[patient]~~, or the individual's ~~[patient's]~~ responsible relative or guardian cannot be reached within twenty-four (24) hours, the licensee shall notify them as soon as practicable.

~~[patient]~~ or the individual's ~~[patient's]~~ responsible relative or guardian without first consulting the referring physician.

(d) The licensee shall not delay medical care for the individual ~~[patient]~~, including necessary remedial care as a result of the misadministration, because of the notification requirements of this subsection.

(2) Within fifteen (15) days after discovery of the ~~[a]~~ misadministration, the licensee shall report, in writing, to the cabinet ~~and shall furnish a copy of the report or a brief description of both the event and consequences as they may affect the patient, if a statement is included that the report submitted to the cabinet can be obtained from the licensee, to the patient or the patient's responsible relative or guardian if either was previously notified by the licensee as required by this section]~~.

(a) The written report shall include:

1. The licensee's name;
2. Prescribing physician's name;
3. A brief description of the event;
4. Effect on the individual ~~[patient]~~;
5. ~~Action taken to prevent recurrence;~~
6. ~~Why the event occurred;~~
6. ~~[7.]~~ What improvements are needed to prevent recurrence; ~~[and]~~

7. Action taken to prevent recurrence;

8. If the licensee informed the individual ~~[patient]~~ or the individual's ~~[patient's]~~ responsible relative or guardian, and if not, why; and

9. Information provided to the individual or individual's responsible relative or guardian. ~~[not]~~.

(b) The report shall not include the individual's ~~[patient's]~~ name or other information that may lead to identification of the individual ~~[patient]~~.

(3) A licensee shall retain a record of each misadministration for five (5) years. The record shall contain:

(a) Names of individuals involved in the event, including:

1. The prescribing physician;
2. Allied health personnel;
3. The individual who received the misadministration ~~[patient]~~; and
4. Individual's ~~[Patient's]~~ referring physician;

(b) Individual's ~~[Patient's]~~ Social Security or identification number, if one has been assigned;

(c) A brief description of the misadministration event;

(d) Effect on the individual ~~[patient]~~; ~~and~~

(e) Action taken to prevent recurrence; and

(f) What improvements are needed to prevent recurrence.

(4) Aside from the notification requirement, nothing in this section shall affect rights or duties of licensees, and physicians in relation to each other, individuals receiving misadministrations ~~[patients]~~, or responsible relatives or to the individual's guardians.

Section 13. Suppliers. A licensee shall use for medical use only:

(1) Radioactive material manufactured, produced, prepared, compounded, labeled, packaged, and distributed in accordance with a license issued pursuant to 902 KAR 100:040 and 902 KAR 100:058, equivalent regulations of another agreement state, or the U.S. Nuclear Regulatory Commission; ~~and~~

(2) Reagent kits, radiopharmaceuticals, and radiobiologics manufactured, labeled, packaged, and distributed in accordance with an approval issued by the U.S. Department of Health and Human Services, Food and Drug Administration;

(3) Radiopharmaceuticals compounded from a prescription in accordance with the administrative regulations of the State Board of Pharmacy; or

(4) Brachytherapy sources manufactured and distributed in accordance with a license issued by the cabinet, equivalent regulations of another agreement state, or the U.S. Nuclear Regulatory Commission.

Section 14. Quality Control of Diagnostic [Imaging] Equipment. A licensee shall establish written quality control procedures for diagnostic equipment used for [to obtain images from] radionuclide studies.

(1) As a minimum, the procedures shall include:

(a) Quality control procedures recommended by equipment manufacturers; or

(b) Procedures approved by the cabinet.

(2) The licensee shall conduct quality control procedures in accordance with written procedures.

Section 15. Possession, Use, Calibration, and Check of Dose Calibrators. (1) A medical use licensee authorized to administer radiopharmaceuticals shall:

(a) Possess a dose calibrator and use the calibrator to measure the amount of activity administered to each patient or human research subject; or

(b) In the case where an ionization type dose calibrator cannot be used effectively to verify administered activity, use an alternative method. The alternative method shall be approved by the cabinet in writing and shall provide for acceptable verification of constancy, accuracy, linearity, and geometry dependence as applicable.

(2) A licensee shall ensure the constancy, accuracy, linearity, and geometry dependence of the dose calibrator as follows:

(a) Constancy shall be checked with a dedicated check source at the beginning of each day of use. The check shall be done on a frequently used setting with a sealed source of not less than ~~ten (10) microcuries of radium-226 or~~ fifty (50) microcuries of a [other] photon-emitting radionuclide with a half-life greater than ninety (90) days;

(b) Accuracy shall be tested upon installation and at intervals not to exceed twelve (12) months by assaying at least two (2) sealed sources containing different radionuclides, whose [the] activity the manufacturer has determined within five (5) percent of the stated activity, with a minimum activity of [ten (10) microcuries for radium-226 and] fifty (50) microcuries [for other photon-emitting radionuclides], and at least one (1) having a principal photon energy between 100 keV and 500 keV;

(c) Linearity shall be tested upon installation and at intervals not to exceed three (3) months over the range of use between thirty (30) [ten (10)] microcuries and the highest dosage administered; and

(d) Geometry dependence shall be tested upon installation over the range of volumes and volume configurations for which it shall be used. The licensee shall keep a record of this test for the duration of the use of the dose calibrator.

(3) A licensee shall mathematically correct dosage readings for geometry or linearity errors that exceeds ten (10) percent if the dosage is greater than thirty (30) [ten (10)] microcuries, and shall repair or replace the dose calibrator if the accuracy or constancy error exceed ten (10) percent.

(4) A licensee shall perform checks and tests required by this section following adjustment or repair of the dose calibrator.

(5) A licensee shall retain a record of each check and test required by this section for three (3) years. The records required shall include:

(a) For subsection (2)(a) of this section, the:

1. Model and serial number of the dose calibrator;

2. Identity and calibrated activity of the radionuclide contained in the check source;

3. Date of the check;

4. Activity measured;

5. Instrument settings; and

6. Initials of the individual who performed the check;

(b) For subsection (2)(b) of this section, the:

1. Model and serial number of the dose calibrator;

2. Model and serial number of each source used and identity of the radionuclide contained in the source and its activity;

3. Date of the test;

4. Results of the test;

5. Instrument settings; and

6. Signature of the individual who performed the test [radiation safety officer];

(c) For subsection (2)(c) of this section, the:

1. Model and serial number of the dose calibrator;

2. Calculated activities;

3. Measured activities;

4. Date of the test; and

5. Signature of the individual who performed the test [radiation safety officer]; and

(d) For subsection (2)(d) of this section, the:

1. Model and serial number of the dose calibrator;

2. Configuration and calibrated activity of the source measured;

3. Activity of the source;

4. Activity measured and instrument setting for each volume measured;

5. Date of the test; and

6. Signature of the individual who performed the test [radiation safety officer].

Section 16. Calibration and Check of Survey Instruments. (1) A licensee shall ensure that the survey instruments used to show compliance with this administrative regulation have been calibrated before first use, annually, and following repair.

(2) A licensee shall:

(a) Calibrate required scale readings up to 1000 millirems per hour with a radiation source;

(b) Calibrate two (2) readings for each scale, separated by at least fifty (50) percent of scale rating; and

(c) Conspicuously note on the instrument the apparent dose rate from a dedicated check source as determined at the time of calibration, and the date of calibration.

(3) A licensee shall consider a point as calibrated if:

(a) The indicated dose rate differs from the calculated dose rate by not more than ten (10) percent; and

(b) The indicated dose rate differs from the calculated dose rate by not more than twenty (20) percent and a correction chart or graph is conspicuously attached to the instrument.

(4) A licensee shall check each survey instrument for proper operation with the dedicated check source before each day of use. The licensee shall not be required to keep records of these checks.

(5) A licensee shall retain a record of each calibration required in this section for three (3) years. The record shall include:

(a) A description of the calibration procedure;

(b) A description of the source used and the certified dose rates from the source;

(c) Rates indicated by the instrument being calibrated;

(d) Correction factors deduced from the calibration data;

(e) Signature of the individual who performed the calibration; and

(f) Date of calibration.

(6) A licensee shall obtain the services of individuals licensed by the cabinet, the U.S. Nuclear Regulatory Commission, or another agreement state, to perform calibrations of survey instruments.

~~[(7) Records of calibrations which contain information required by subsection (5) of this section shall be maintained by the licensee.]~~

Section 17. Assay of Radiopharmaceutical Dosages. A licensee shall:

(1) Assay, before medical use, the activity of each photon-emitting radiopharmaceutical dosage that contains more than thirty (30) [ten (10)] microcuries of a photon-emitting radionuclide;

(2) Assay, before medical use, the activity of each radiopharmaceutical dosage emitting alpha or beta radiation as the radiation of principal interest, unless the radiopharmaceutical has been obtained:

(a) In unit dose form, calibrated by the supplier for individual patients or human research subjects; and

(b) From a supplier participating in a measurement quality

assurance program with the National Institute of Standards and Technology, designed to ensure unit doses have a calibration traceable to a national standard [with a desired activity of ten (10) microcuries or less of a photon-emitting radionuclide to verify that the dosage shall not exceed ten (10) microcuries]; and

(3) Retain a record of the assays required by this section for three (3) years. The record shall contain the:

(a) Generic name, trade name, or abbreviation of the radiopharmaceutical, lot number, expiration dates, and the radionuclide;

(b) Patient's or human research subject's name and identification number if one has been assigned;

(c) Prescribed dosage and activity of the dosage at the time of assay, or a notation that the total activity is less than thirty (30) [ten (10)] microcuries;

(d) Date and time of the assay and administration; and

(e) Initials of the individual who performed the assay.

Section 18. Authorization for Calibration and Reference Sources. A person authorized by Section 1 of this administrative regulation for medical use of radioactive material may receive, possess, and use the following radioactive material for check, calibration, and reference use:

(1) Sealed sources, not exceeding fifteen (15) millicuries per source, manufactured and distributed by persons specifically licensed pursuant to 902 KAR 100:040 and 902 KAR 100:058, equivalent provisions of the U.S. Nuclear Regulatory Commission, or another agreement state;

(2) Radioactive materials ~~[listed in Sections 20 and 31 of this administrative regulation]~~ with a half-life of 100 days or less in individual amounts not to exceed fifteen (15) millicuries;

(3) Radioactive materials ~~[listed in Sections 20 and 31 of this administrative regulation]~~ with a half-life greater than 100 days in individual amounts not to exceed 200 microcuries; and

(4) Technetium-99m in individual amounts not to exceed fifty (50) millicuries.

Section 19. Requirements for Possession of Sealed Sources and Brachytherapy Sources. (1) A licensee in possession of a sealed source or brachytherapy source shall:

(a) Follow the radiation safety and handling instructions supplied by the manufacturer or equivalent instructions approved by the cabinet; and

(b) Maintain the instructions for the duration of source use in a legible form convenient to users.

(2) A licensee in possession of a sealed source shall assure that:

(a) The source is tested for leakage before its first use unless the licensee has a certificate from the supplier indicating that the source was tested within six (6) months before transfer to the licensee; and

(b) The source is tested for leakage at intervals not to exceed six (6) months or at intervals approved by the cabinet, another agreement state, or the U.S. Nuclear Regulatory Commission.

(3) To satisfy the leak test requirements of this section, a licensee shall assure that:

(a) Leak tests are capable of detecting the presence of 0.005 microcurie of radioactive material on the test sample, or in the case of radium, the escape of radon at the rate of 0.001 microcurie per twenty-four (24) hours;

(b) Test samples are taken from the source or from the surfaces of the device in which the source is mounted or stored on which radioactive contamination may accumulate; and

(c) Test samples are taken with the source in the "off" position.

(4) A licensee shall retain leak test records for five (5) years. The records shall contain:

(a) Model number and serial number if assigned, of each source tested;

(b) Identity of each source radionuclide and its estimated activity;

(c) Measured activity of each test sample expressed in micro-

curies;

(d) A description of the method used to measure each test sample;

(e) Date of the test; and

(f) Signature of the radiation safety officer.

(5) If the leak test reveals the presence of 0.005 microcurie or more of removable contamination, the licensee shall:

(a) Immediately withdraw the sealed source from use and store it in accordance with the requirements of 902 KAR 100:019 and 902 KAR 100:060; and

(b) File a report with the cabinet within five (5) days of receiving the leak test results, describing the:

1. Equipment involved;

2. Test results; and

3. Action taken.

(6) A licensee need not perform a leak test on the following sources:

(a) Sources containing only radioactive material with a half-life of less than thirty (30) days;

(b) Sources containing only radioactive material as a gas;

(c) Sources containing 100 microcuries or less of beta or photon-emitting material, or ten (10) microcuries or less of alpha-emitting material;

(d) Seeds of iridium-192 encased in nylon ribbon; and

(e) Sources stored and not being used. The licensee shall test each source for leakage before use or transfer, unless it has been tested for leakage within six (6) months before the date of use or transfer.

(7) A licensee in possession of a sealed source or brachytherapy source shall conduct a physical inventory of sources at intervals not to exceed three (3) months. The licensee shall retain each inventory record for five (5) years, and the inventory records shall contain:

(a) Model number of each source;

(b) Serial number, if one has been assigned;

(c) Identity of each source radionuclide and its estimated activity;

(d) Location of each source;

(e) Date of the inventory; and

(f) Signature of the radiation safety officer.

(8) A licensee in possession of a sealed source or brachytherapy source shall survey with a radiation survey instrument, at intervals not to exceed three (3) months, the areas where sources are stored. This requirement shall not apply to:

(a) Teletherapy sources in teletherapy units; or

(b) Sealed sources in diagnostic devices.

(9) A licensee shall retain a record of ~~[each]~~ surveys required in this section for three (3) years. The record shall include:

(a) Date of the survey;

(b) A sketch of each area surveyed;

(c) Measured dose rate at several points in each area expressed in millirems per hour;

(d) Model and serial number of the survey instrument used to make the survey; and

(e) Signature of the individual who performed the survey [radiation safety officer].

Section 20. Syringe Shields. (1) A licensee shall keep syringes that contain radioactive material to be administered in a radiation shield.

(2) A licensee shall require each individual who prepares or administers radiopharmaceuticals to use a syringe radiation shield, unless the use of the shield is contraindicated for that patient or human research subject.

Section 21. Syringe Labels. A licensee shall conspicuously label each syringe, or syringe radiation shield that contains a syringe with a radiopharmaceutical, unless the radiopharmaceutical is to be administered immediately, with the:

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- (1) Radiopharmaceutical name or its abbreviation;
- (2) Type of diagnostic study or therapy procedure to be performed; or
- (3) Patient's or human research subject's name, ~~unless the radiopharmaceutical is to be administered immediately~~.

Section 22. Vial Shields. A licensee shall require each individual preparing or handling a vial that contains a radiopharmaceutical to keep the vial in a vial radiation shield.

Section 23. Vial Shield Labels. A licensee shall conspicuously label each vial radiation shield that contains a vial of a radiopharmaceutical with the radiopharmaceutical name or its abbreviation.

Section 24. Surveys for Contamination and Ambient Radiation Dose Rate. (1) A licensee shall survey with a radiation detection survey instrument at the end of each day of use areas where radiopharmaceuticals are routinely prepared for use or administered.

(2) A licensee shall survey at least weekly with a radiation detection survey instrument ~~at least weekly~~ areas where radiopharmaceuticals or radioactive wastes are stored.

(3) A licensee shall conduct the dose rate surveys to measure dose rates as low as one-tenth (0.1) millirem per hour.

(4) A licensee shall establish dose rate action levels for the surveys and require that the individual performing the survey immediately notify the radiation safety officer if a dose rate exceeds an action level.

(5) A licensee shall survey weekly for removable contamination ~~weekly~~ in areas where radiopharmaceuticals are routinely prepared for use, administered, or stored.

(6) A licensee shall conduct the contamination surveys to detect contamination on each wipe sample of 2000 disintegrations per minute.

(7) A licensee shall establish removable contamination action levels for the surveys, and require that the individual performing the survey immediately notify the radiation safety officer if contamination exceeds action levels.

(8) A licensee shall retain a record of each survey for three (3) years. The record shall include:

- (a) Date of the survey;
- (b) A sketch of each area surveyed;
- (c) Action levels established for each area;
- (d) Measured dose rate at several points in each area expressed in millirems per hour or the removable contamination in each area expressed in disintegrations per minute per 100 square centimeters;
- (e) Serial and model number of the instrument used to make the survey or analyze the samples; and
- (f) Initials of the individual who performed the survey.

Section 25. Release of Patients Containing Radiopharmaceuticals or ~~Permanent~~ Implants. (1) A licensee may ~~shall not~~ authorize release from its control ~~confinement for medical care~~ a patient or human research subject administered a radiopharmaceutical or permanent or temporary implant containing radioactive material, if the total effective dose equivalent to another individual from exposure to the released individual is not likely to exceed five-tenths (0.5) rem.

(2) The licensee shall provide the patient or human research subject with oral and written instructions on actions recommended to maintain doses to other individuals as low as is reasonably achievable if the total effective dose equivalent to another individual is likely to exceed one-tenth (0.1) rem.

(3) If the dose to a breast-feeding infant or child may exceed one-tenth (0.1) rem with no interruption of breast-feeding, the instructions shall also include:

- (a) Guidance on the interruption or discontinuation of breast-feeding; and
- (b) Information on the consequences of failure to follow the

guidance.

(4) The licensee shall maintain a record of the basis for authorizing the release of a patient or human research subject, for three (3) years after the date of release, if the total effective dose equivalent is calculated using:

- (a) The retained activity rather than the activity administered;
- (b) An occupancy factor less than 0.25 at one (1) meter;
- (c) The biological or effective half-life; or
- (d) Considering the shielding by the tissue.
- (5) The licensee shall maintain a record, for three (3) years after the date of release, that instructions were provided to a breast-feeding woman if the radiation dose to the infant or child from continued breast-feeding may result in a total effective dose equivalent exceeding one-tenth (0.1) rem. ~~until:~~

~~(a) The dose rate from the patient is less than five (5) millirems per hour at a distance of one (1) meter; or~~

~~(b) The activity in the patient is less than thirty (30) millicuries.~~  
~~(2) A licensee shall not authorize release from confinement for medical care a patient administered a permanent implant until the dose rate from the patient is less than five (5) millirems per hour at a distance of one (1) meter.]~~

Section 26. Mobile Nuclear Medicine Service Technical Requirements. A licensee providing mobile nuclear medicine service shall:

(1) Transport to each address of use only syringes or vials containing prepared radiopharmaceuticals or radiopharmaceuticals intended for reconstitution of radiopharmaceutical kits;

(2) Bring into each address of use radioactive material to be used and, before leaving, remove unused radioactive material and associated radioactive waste;

(3) Secure or keep under constant surveillance and immediate control radioactive material if in transit or at an address of use;

(4) Check survey instruments and dose calibrators for constancy and response as required in Sections 15 and 16 of this administrative regulation, and check other transported equipment for proper function before medical use at each address of use;

(5) Carry a calibrated survey meter in each vehicle being used to transport radioactive material and, before leaving a client address of use, survey areas of radiopharmaceutical use with a radiation detection survey instrument to ensure that radiopharmaceuticals and associated radioactive waste have been removed; and

(6) Retain a record of each survey for three (3) years. The record shall include:

- (a) Date of the survey;
- (b) A sketch of each area surveyed;
- (c) Measured dose rate at several points in each area of use expressed in millirems per hour;
- (d) Model and serial number of the instrument used to make the survey; and
- (e) Initials of the individual who performed the survey.

Section 27. Storage of Volatiles and Gases. A licensee shall store:

(1) Volatile radiopharmaceuticals and radioactive gases in the shippers' radiation shield and container; and

(2) Use a multidose container in a properly functioning fume hood.

Section 28. Decay-in-storage. (1) A licensee shall hold radioactive material with a physical half-life of less than sixty-five (65) days for decay-in-storage before disposal in ordinary trash, and shall be exempt from the requirements of 902 KAR 100:021, Section 1 if the licensee:

- (a) Holds radioactive material for decay a minimum of ten (10) half-lives;
- (b) Monitors radioactive material at the container surface before disposal as ordinary trash and determines that its radioactivity cannot

be distinguished from the background radiation level with a radiation detection survey instrument set on its most sensitive scale and with no interposed shielding;

(c) Removes or obliterates radiation labels; and

(d) Separates and monitors each generator column individually with radiation shielding removed to ensure that its contents have decayed to background radiation level before disposal.

(2) For radioactive material disposed in accordance with this section, the licensee shall retain a record of each disposal for three (3) years. The record shall include the:

(a) Date of the disposal;

(b) Date on which the radioactive material was placed in storage;

(c) Radionuclides disposed;

(d) Model and serial number of the survey instrument used;

(e) Background dose rate;

(f) Radiation dose rate measured at the surface of each waste container; and

(g) Name of the individual who performed the disposal.

Section 29. Use of Radiopharmaceuticals for Uptake, Dilution, or Excretion Studies. [(1)] A licensee shall use ~~the following prepared radiopharmaceuticals~~ for diagnostic studies involving the measurement of uptake, dilution, or excretion any unsealed radioactive material prepared for medical use that is:

(1) Obtained from a manufacturer or preparer licensed in accordance with 902 KAR 100:058, equivalent regulations of another agreement state, or the U. S. Nuclear Regulatory Commission; or

(2) Prepared by an authorized nuclear pharmacist, a physician who is an authorized user and meets the requirements specified in Section 49 of this administrative regulation, or an individual under the supervision of either as specified in Section 8 of this administrative regulation.[-]

~~(a) Iodine 131 as sodium iodide, iodinated human serum albumin (IHS), labeled rose bengal, or sodium iodohippurate;~~

~~(b) Iodine 125 as sodium iodide or iodinated human serum albumin (IHS);~~

~~(c) Cobalt 57 as labeled cyanocobalamin;~~

~~(d) Cobalt 58 as labeled cyanocobalamin;~~

~~(e) Cobalt 60 as labeled cyanocobalamin;~~

~~(f) Chromium 51 as sodium chromate or labeled human serum albumin;~~

~~(g) Iron 59 as citrate;~~

~~(h) Technetium 99m as pertechnetate; or~~

~~(i) Radioactive material in a radiopharmaceutical for a diagnostic use involving measurements of uptake, dilution, or excretion for which the Food and Drug Administration (FDA) has:~~

~~1. Accepted a "Notice of Claimed Investigational Exemption for a New Drug" (IND);~~

~~2. Approved a "New Drug Application" (NDA); or~~

~~3. Issued a biological product license.~~

~~(2) A licensee using a radiopharmaceutical for a clinical procedure other than one specified in the product label or package insert instructions shall comply with the product label or package insert instructions regarding physical form, route of administration, and dosage range.[-]~~

Section 30. Possession of Survey Instrument. A licensee authorized to use radioactive material for uptake, dilution, and excretion studies shall possess a portable radiation detection survey instrument capable of detecting dose rates over the range one-tenth (0.1) millirem per hour to fifty (50) millirems per hour. The instrument shall be operable and calibrated in accordance with Section 16 of this administrative regulation.

Section 31. Use of Radiopharmaceuticals, Generators, and Reagent Kits for Imaging and Localization Studies. (1) A licensee shall use ~~[one (1) of the following radiopharmaceuticals, generators,~~

~~and reagent kits] for imaging and localization studies, radioactive material prepared for medical use that is either:~~

~~(a) Obtained from a manufacturer or preparer licensed in accordance with 902 KAR 100:058, equivalent agreement state requirements or the U. S. Nuclear Regulatory Commission; or~~

~~(b) Prepared by an authorized nuclear pharmacist, a physician who is an authorized user and who meets the requirements specified in Section 50 of this administrative regulation, or an individual under the supervision of either as specified in Section 8 of this administrative regulation. [Molybdenum 99/technetium 99m generators for the elution or extraction of technetium 99m as pertechnetate;~~

~~(b) Technetium 99m as pertechnetate;~~

~~(c) Prepared radiopharmaceuticals and reagent kits for the preparation of the following technetium 99m labeled radiopharmaceuticals:~~

~~1. Sulfur colloid;~~

~~2. Pentetate sodium;~~

~~3. Human serum albumin microspheres;~~

~~4. Polyphosphate;~~

~~5. Macroaggregated human serum albumin;~~

~~6. Etidronate sodium;~~

~~7. Stannous pyrophosphate;~~

~~8. Human serum albumin;~~

~~9. Medronate sodium;~~

~~10. Glucoceptate sodium;~~

~~11. Oxidronate sodium;~~

~~12. Disofenin; and~~

~~13. Succimer;~~

~~(d) Iodine 131 as sodium iodide, iodinated human serum albumin, macroaggregated iodinated human serum albumin, colloidal (macroaggregated) iodinated human serum albumin, rose bengal, or sodium iodohippurate;~~

~~(e) Iodine 125 as sodium iodide or fibrinogen;~~

~~(f) Chromium 51 as human serum albumin;~~

~~(g) Gold 198 in colloidal form;~~

~~(h) Mercury 197 as chlormerodrin;~~

~~(i) Selenium 75 as selenomethionine;~~

~~(j) Strontium 85 as nitrate;~~

~~(k) Ytterbium 169 as pentetate sodium;~~

~~(l) Gallium 67 as citrate;~~

~~(m) Indium 111 as chloride or DTPA;~~

~~(n) Tin 113/indium 113m generators for the elution of indium 113m as chloride;~~

~~(o) Yttrium 87/strontium 87m generators for the elution of strontium 87m;~~

~~(p) Thallium 201 as chloride;~~

~~(q) Iodine 123 as sodium iodide or iodohippurate; or~~

~~(r) Radioactive material in a diagnostic radiopharmaceutical, except aerosol or gaseous form, or a generator or reagent kit for preparation and diagnostic use of a radiopharmaceutical containing radioactive material for which the Food and Drug Administration has accepted a "Notice of Claimed Investigational Exemption for a New Drug" (IND), approved a "New Drug Application" (NDA), or issued a biological product license.~~

~~(2) A licensee using radiopharmaceuticals for clinical procedures shall comply with the product label or package insert regarding physical form, route of administration, and dosage range.~~

~~(3) A licensee shall elute generators in compliance with Section 32 of this administrative regulation and prepare radiopharmaceuticals from kits in accordance with the manufacturer's instructions.~~

~~(4) Technetium 99m pentetate as an aerosol for lung function studies shall not be subject to the restrictions in subsection (2) of this section.[-]~~

~~(2) [(5)] If the conditions of Section 33 of this administrative regulation are met, a licensee shall use radioactive aerosols or gases only if specific application has been made to and approved by the cabinet.~~

Section 32. Permissible Radionuclide Contaminant [~~Molybdenum-99~~] Concentration. (1) A licensee shall not administer to humans a radiopharmaceutical containing more than:

(a) 0.15 microcurie of molybdenum-99 per millicurie of technetium-99m;

(b) 0.02 microcurie of strontium-82 per millicurie of rubidium-82;

or

(c) 0.2 microcurie of strontium-85 per millicurie of rubidium-82.

(2) A licensee preparing [~~technetium-99m~~] radiopharmaceuticals from radionuclide [~~molybdenum-99/technetium-99m~~] generators shall measure the [~~molybdenum-99~~] concentration of radionuclide contaminant in each elute or extract, as appropriate for the generator system, to determine compliance with limits specified in subsection (1) of this section.

(3) [~~This testing shall be conducted according to written procedures and by personnel specifically trained to perform the test.~~]

(4) A licensee required to measure radionuclide contaminant [~~molybdenum~~] concentration shall retain a record of each measurement for three (3) years. The record shall include, for each elution or extraction tested [~~of technetium-99m~~], the:

(a) Measured activity of the radiopharmaceutical [~~technetium~~] expressed in millicuries;

(b) Measured activity of contaminant [~~molybdenum~~] expressed in millicuries;

(c) Ratio of the measurements in subsection (4)(a) and (b) of this section [~~measures~~] expressed as microcuries of contaminant [~~molybdenum~~] per millicurie of radiopharmaceutical [~~technetium~~];

(d) Date of the test; and

(e) Initials of the individual who performed the test.

(4) [(5)] A licensee shall report immediately to the cabinet each occurrence of contaminant [~~molybdenum-99~~] concentration exceeding the limits specified in this section.

Section 33. Control of Aerosols and Gases. (1) A licensee who administers radioactive aerosols or gases shall do so with a system that shall keep airborne concentrations within the limits prescribed by 902 KAR 100:019, Sections 2, 3, and 10.

(2) A system shall:

(a) Be directly vented to the atmosphere through an air exhaust that meets the requirements of subsection (1) of this section; or

(b) Provide for collection and decay or disposal of the aerosol or gas in a shielded container.

(3) A licensee shall administer radioactive gases only in rooms that are at negative pressure compared to surrounding rooms.

(4) Before receiving, using, or storing a radioactive gas, a licensee shall calculate the amount of time needed after a release to reduce the concentration in the area of use to the occupational limit listed in 902 KAR 100:019.

(a) The calculation shall be based on the highest activity of gas handled in a single container and the measured available air exhaust rate.

(b) A copy of the calculations shall be recorded and retained for the duration of the license.

(5) A licensee shall post the time calculated in this section at the area of use and require that, in case of a gas spill, individuals evacuate the room until the posted time has elapsed.

(6) A licensee shall check the operation of collection systems monthly and measure the ventilation rates in areas of use at intervals not to exceed six (6) months. Records shall be maintained for three (3) years.

Section 34. Possession of Survey Instruments. (1) A licensee authorized to use radioactive material for imaging and localization studies shall possess a portable radiation:

(a) Detection survey instrument capable of detecting dose rates over the range of one-tenth (0.1) millirem per hour to fifty (50) millirems per hour; and

(b) Measurement survey instrument capable of measuring dose rates over the range one (1) millirem per hour to 1000 millirems per hour.

(2) Instruments shall be operable and calibrated in accordance with Section 16 of this administrative regulation.

Section 35. Use of Radiopharmaceuticals for Therapy. A licensee shall use for therapeutic administration radioactive material prepared for medical use that is either [~~one (1) of the following prepared radiopharmaceuticals~~]:

(1) Obtained from a manufacturer or preparer licensed in accordance 902 KAR 100:058, equivalent agreement state requirements, or the U.S. Nuclear Regulatory Commission; or

(2) Prepared by an authorized nuclear pharmacist, a physician who is an authorized user and who meets the requirements specified in Section 51 of this administration regulation, or an individual under the supervision of either as specified in Section 8 of this administrative regulation, [~~Iodine-131 as iodide for treatment of hyperthyroidism, cardiac dysfunction, and thyroid carcinoma;~~]

(2) Phosphorus-32 as soluble phosphate for treatment of polycythemia vera, leukemia, and bone metastases;

(3) Phosphorus-32 as colloidal chromic phosphate for intracavitary treatment of malignant effusions;

(4) Gold-198 as colloid for intracavitary treatment of malignant effusions; or

(5) Radioactive material in a radiopharmaceutical and for a therapeutic use for which the Food and Drug Administration has accepted a "Notice of Claimed Investigational Exemption for a New Drug" (IND), or approved a "New Drug Application" (NDA). The licensee shall comply with the package insert instructions regarding indications and method of administration.]

Section 36. Safety Instruction. (1) A licensee shall provide oral and written radiation safety instruction for personnel caring for patients or human research subjects undergoing radiopharmaceutical therapy. Refresher training shall be provided at intervals not to exceed one (1) year.

(2) The instruction shall describe the licensee's procedures for:

(a) Patient or human research subject control;

(b) Visitor control;

(c) Contamination control;

(d) Waste control; and

(e) Notification of the radiation safety officer or authorized user in case of the patient's or human research subject's death or medical emergency.

(3) A licensee shall keep a record of individuals receiving instruction.

(a) The record shall include:

1. Description of the instruction;

2. Date of instruction; and

3. Name of the individual who gave the instruction.

(b) The record shall be maintained for inspection by the cabinet for three (3) years.

Section 37. Safety Precautions. (1) For each patient or human research subject receiving radiopharmaceutical therapy and hospitalized for compliance with Section 25 of this administrative regulation, a licensee shall:

(a) Provide a private room with a private sanitary facility;

(b) Post the patient's or human research subject's door with a "Caution: Radioactive Material" sign, and note on the door or on the patient's or human research subject's chart where and how long visitors may stay in the patient's or human research subject's room;

(c) Authorize visits by individuals under eighteen (18) years of age only on a case-by-case basis with the approval of the authorized user after consultation with the radiation safety officer;

(d) Promptly after administration of the dosage, measure the dose

rates in contiguous restricted and unrestricted areas with a radiation measurement survey instrument to demonstrate compliance with the requirements of 902 KAR 100:019, Section 10 and retain for three (3) years a record of ~~the [each]~~ survey that includes:

1. Time and date of the survey;
2. Plan of the area or list of points surveyed;
3. Measured dose rate at several points expressed in millirems per hour;
4. Model and serial number of the instrument used to make the survey; and
5. Initials of the individual who made the survey;

(e) Monitor material and items removed from the patient's or human research subject's room to determine that contamination cannot be distinguished from the natural background radiation level with a radiation detection survey instrument set on its most sensitive scale and with no interposed shielding, or handle these materials and items as radioactive waste;

~~(f) [Provide the patient with radiation safety guidance that shall help to keep radiation dose to household members and the public ALARA before authorizing release of the patient;~~

~~(g) [Survey the patient's or human research subject's room and private sanitary facility for removable contamination with a radiation detection survey instrument before assigning another patient or human research subject to the room. The room shall not be re-occupied until removable contamination is less than 200 disintegrations per minute per 100 square centimeters; and~~

~~(h) [Measure the thyroid burden of each individual who helped prepare or administer a dosage of iodine-131 within three (3) days after administering the dosage, and retain for the period required by 902 KAR 100:019, Section 34(1), a record of:~~

1. Each thyroid burden measurement;
2. Date of measurement;
3. Name of the individual whose thyroid burden was measured; and
4. Initials of the individual who made the measurements.

(2) A licensee shall notify the radiation safety officer or the authorized user immediately if the patient or human research subject dies or has a medical emergency.

Section 38. Possession of Survey Instruments. A licensee authorized to use radioactive material for radiopharmaceutical therapy shall possess a portable radiation detection survey instrument capable of detecting dose rates over the range one-tenth (0.1) millirem per hour to fifty (50) millirems per hour, and a portable radiation measurement survey instrument capable of measuring dose rates over the range one (1) millirem per hour to 1000 millirems per hour. The instruments shall be operable and calibrated in accordance with Section 16 of this administrative regulation.

Section 39. Use of Sealed Sources for Diagnosis. A licensee shall use the following sealed sources in accordance with the manufacturer's radiation safety and handling instructions:

- (1) Iodine-125 as a sealed source in a device for bone mineral analysis;
- (2) Americium-241 as a sealed source in a device for bone mineral analysis;
- (3) Gadolinium-153 as a sealed source in a device for bone mineral analysis; and
- (4) Iodine-125 as a sealed source in a portable device for imaging.

Section 40. Availability of Survey Instrument. A licensee authorized to use radioactive material as a sealed source for diagnostic purposes shall have available for use a portable radiation detection survey instrument capable of detecting dose rates over the range one-tenth (0.1) millirem per hour to fifty (50) millirems per hour, or a portable radiation measurement survey instrument capable of

measuring dose rates over the range one (1) millirem per hour to 1000 millirems per hour. The instrument shall be operable and calibrated in accordance with Section 16 of this administrative regulation.

Section 41. Use of Sources for Brachytherapy. A licensee shall use the following sources in accordance with the manufacturer's radiation safety and handling instructions:

- (1) Cesium-137 as a sealed source in needles and applicator cells for topical, interstitial, and intracavitary treatment of cancer;
- (2) Cobalt-60 as a sealed source in needles and applicator cells for topical, interstitial, and intracavitary treatment of cancer;
- (3) Gold-198 as a sealed source in seeds for interstitial treatment of cancer;
- (4) Iodine-125 as a sealed source in seeds for interstitial treatment of cancer;
- (5) Iridium-192 as seeds encased in nylon ribbon for interstitial treatment of cancer;
- ~~(6) [Radium-226 as a sealed source in needles or applicator cells for topical, interstitial, and intracavitary treatment of cancer;~~
- ~~(7) [Radium-222 as seeds for interstitial treatment of cancer;~~
- ~~(8) [Palladium-103 as a sealed source in seeds for interstitial treatment of cancer; and~~
- (7) ~~(9)~~ Strontium-90 as a sealed source in an applicator for treatment of superficial eye conditions.

Section 42. Safety Instruction. (1) A licensee shall provide oral and written radiation safety instruction to personnel caring for a patient or human research subject receiving implant therapy. Refresher training shall be provided at intervals not to exceed one (1) year.

- (2) The instruction shall describe:
  - (a) Size and appearance of the brachytherapy sources;
  - (b) Safe handling and shielding instructions in case of a dislodged source;
  - (c) Procedures for patient or human research subject control;
  - (d) Procedures for visitor control; and
  - (e) Procedures for notification of the radiation safety officer or authorized user if the patient or human research subject dies or has a medical emergency.
- (3) A licensee shall maintain for three (3) years a record of individuals receiving instruction. The record shall include:
  - (a) Description of the instruction;
  - (b) Date of instruction; and
  - (c) Name of the individual who gave the instruction.

Section 43. Safety Precautions. (1) For each patient or human research subject receiving implant therapy and not released from licensee control in accordance with Section 25 of this administrative regulation, a licensee shall:

- (a) Not place the patient or human research subject in the same room with a patient or human research subject who is not receiving radiation therapy unless the licensee can demonstrate compliance with the requirement of 902 KAR 100:019, Section 10, at a distance of one (1) meter from the implant;
- (b) Post the patient's or human research subject's door with a "Caution: Radioactive Materials" sign, and note on the door or the patient's or human research subject's chart where and how long visitors may stay in the patient's or human research subject's room;
- (c) Authorize visits by individuals under eighteen (18) years of age only on a case-by-case basis with the approval of the authorized user after consultation with the radiation safety officer;
- (d) Promptly after implanting the sources, survey the dose rates in contiguous restricted and unrestricted areas with a radiation measurement survey instrument to demonstrate compliance with 902 KAR 100:019, Section 10, and retain for three (3) years a record of each survey that includes:

1. Time and date of the survey;

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2. A sketch of the area or list of points surveyed;
3. Measured dose rate at several points expressed in millirems per hour;
4. Model and serial number of the instrument used to make the survey; and
5. Initials of the individual who made the survey; ~~and~~  
~~(e) Provide the patient with radiation safety guidance that will help keep the radiation dose to household members and the public ALARA before releasing the patient if the patient was administered a permanent implant).~~

(2) A licensee shall notify the radiation safety officer or authorized user immediately if the patient or human research subject dies or has a medical emergency.

Section 44. Brachytherapy Sources Inventory. (1) If brachytherapy sources are returned to an area of storage from an area of use, the licensee shall immediately count or otherwise verify the number returned to ensure that sources taken from the storage area have been returned.

(2) A licensee shall make a record of brachytherapy source utilization which includes the:

- (a) Names of the individuals permitted to handle the sources;
- (b) Number and activity of sources removed from storage including the:

1. Room number of use and patient's or human research subject's name;

2. Time and date sources were removed from storage;
3. Number and activity of sources in storage after the removal;
4. Initials of the individual who removed the sources from storage; and

- (c) Number and activity of sources returned to storage, including the:

1. Room number of use and patient's or human research subject's name;

2. Time and date sources were returned to storage;
3. Number and activity of sources in storage after the return;
4. Initials of the individual who returned the sources to storage.

(3) Immediately after implanting sources in a patient or human research subject and immediately after removal of sources from a patient or human research subject, a licensee shall make a radiation survey of the patient or human research subject and the area of use to confirm that no sources have been misplaced. The licensee shall make a record of each survey.

(4) A licensee shall maintain the records required in this section for three (3) years.

Section 45. Release of Patients or Human Research Subjects Treated with Temporary Implants. (1) Immediately after removing the last temporary implant source from a patient or human research subject, a licensee shall make a radiation survey of the patient or human research subject with a radiation detection survey instrument to confirm that sources have been removed.

~~(2) [A licensee shall not release from confinement for medical care a patient treated by temporary implants until the sources have been removed.]~~

~~(3)~~ A licensee shall maintain a record of ~~(patient)~~ surveys which demonstrate compliance with this section for three (3) years. The record shall include the:

- (a) Date of the survey;
- (b) Name of the patient or human research subject;
- (c) Dose rate from the patient or human research subject expressed as millirems per hour as [and] measured within one (1) meter from the patient or human research subject; [and]
- (d) Model and serial number of the instrument used to make the survey; and

- (e) Initials of the individual who made the survey.

Section 46. Possession of Survey Instruments. A licensee authorized to use radioactive material for implant therapy shall possess a portable radiation detection survey instrument capable of detecting dose rates over the range one-tenth (0.1) millirem per hour to fifty (50) millirems per hour, and a portable radiation measurement survey instrument capable of measuring dose rates over the range one (1) millirem per hour to 1000 millirems per hour. The instruments shall be operable and calibrated in accordance with Section 16 of this administrative regulation.

Section 47. Training for Nonexperienced Radiation Safety Officer. Except as provided in Section 48 of this administrative regulation, an individual fulfilling the responsibilities of the radiation safety officer as provided in Section 5 of this administrative regulation shall:

(1) Be certified by the:

- (a) American Board of Health Physics in Comprehensive Health Physics;

- (b) American Board of Radiology ~~[in Radiological Physics, Therapeutic Radiological Physics, or Medical Nuclear Physics];~~

- (c) American Board of Nuclear Medicine;

- (d) American Board of Science in Nuclear Medicine; ~~[or]~~

- (e) Board of Pharmaceutical Specialties in Nuclear Pharmacy ~~[or Science];~~

- (f) American Board of Medical Physics in radiation oncology physics;

- (g) Royal College of Physicians and Surgeons of Canada in nuclear medicine;

- (h) American Osteopathic Board of Radiology; or

- (i) American Osteopathic Board of Nuclear Medicine; or

(2) Have 200 hours of classroom and laboratory training including:

- (a) Radiation physics and instrumentation;

- (b) Radiation protection;

- (c) Mathematics pertaining to the use and measurement of radioactivity;

- (d) Radiation biology;

- (e) Radiopharmaceutical chemistry; and

- (f) One (1) year of full time experience in radiation safety at a medical institution under the supervision of the individual identified as the radiation safety officer on the cabinet, another agreement state, or U.S. Nuclear Regulatory Commission license that authorizes the medical use of radioactive material; or

(3) Be an authorized user for those radioactive material uses that come within the radiation safety officer's responsibilities.

Section 48. Training for Experienced Radiation Safety Officer. An individual identified as a radiation safety officer on a license issued by the cabinet, another agreement state, or U.S. Nuclear Regulatory Commission ~~[license]~~ before June 27, 1990 who oversees only the use of radioactive material for which the licensee was authorized on that date, need not comply with the training requirements of Section 47 of this administrative regulation.

Section 49. Training for Uptake, Dilution, or Excretion Studies. Except as provided in Sections 56 and 57 of this administrative regulation, the licensee shall require the authorized user of a radiopharmaceutical listed in Section 29 of this administrative regulation to be a physician who:

(1) Is certified in:

- (a) Nuclear medicine by the American Board of Nuclear Medicine;

- (b) Diagnostic radiology by the American Board of Radiology;

- (c) Diagnostic radiology or radiology ~~[within the previous five (5) years]~~ by the American Osteopathic Board of Radiology; ~~[or]~~

- (d) Nuclear medicine by the American Osteopathic Board of Nuclear Medicine; or

- (e) Nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or

(2) Has completed forty (40) hours of instruction in basic

radionuclide handling techniques applicable to the use of prepared radiopharmaceuticals, and twenty (20) hours of supervised clinical experience.

(a) To satisfy the basic instruction requirement, forty (40) hours of classroom and laboratory instruction shall include:

1. Radiation physics and instrumentation;
2. Radiation protection;
3. Mathematics pertaining to the use and measurement of radioactivity;
4. Radiation biology; and
5. Radiopharmaceutical chemistry.

(b) To satisfy the requirement for twenty (20) hours of supervised clinical experience, training shall be under the supervision of an authorized user at a medical institution, and shall include:

1. Examining patients or human research subjects and reviewing their case histories to determine suitability for radionuclide diagnosis, limitations, or contraindications;
2. Selecting the suitable radiopharmaceuticals and calculating and measuring the dosages;
3. Administering dosages to patients or human research subjects and using syringe radiation shields;
4. Collaborating with the authorized user in the interpretation of radionuclide test results; and
5. Patient or human research subject follow-up; or

(3) Has successfully completed a six (6) month training program in nuclear medicine as part of a training program approved by the Accreditation Council for Graduate Medical Education that included:

- (a) Classroom and laboratory training;
- (b) Work experience; and

(c) Supervised clinical experience in the topics identified in this section.

Section 50. Training for Imaging and Localization Studies. Except as provided in Sections 56 or 57 of this administrative regulation, the licensee shall require the authorized user of a radiopharmaceutical, generator, or reagent kit specified in Section 31 of this administrative regulation to be a physician who:

(1) Is certified in:

- (a) Nuclear medicine by the American Board of Nuclear Medicine;
- (b) Diagnostic radiology by the American Board of Radiology;
- (c) Diagnostic radiology or radiology ~~[within the previous five (5) years]~~ by the American Osteopathic Board of Radiology; ~~[or]~~
- (d) Nuclear medicine by the American Osteopathic Board of Nuclear Medicine; or
- (e) Nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or

(2)(a) Has completed:

1. 200 hours of instruction in basic radionuclide handling techniques applicable to the use of prepared radiopharmaceuticals, generators, and reagent kits;

2. 500 hours of supervised work experience; and
3. 500 hours of supervised clinical experience.

(b) To satisfy the basic instruction requirement, 200 hours of classroom and laboratory training shall include:

1. Radiation physics and instrumentation;
2. Radiation protection;
3. Mathematics pertaining to the use and measurement of radioactivity;
4. Radiopharmaceutical chemistry; and
5. Radiation biology.

(c) To satisfy the requirement for 500 hours of supervised work experience, training shall be under the supervision of an authorized user at a medical institution, and shall include:

1. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
2. Calibrating dose calibrators and diagnostic instruments and performing checks for proper operation of survey meters;

3. Calculating and safely preparing patient or human research subject dosages;

4. Using administrative controls to prevent the misadministration of radioactive material;

5. Using emergency procedures to contain spilled radioactive material safely and using proper decontamination procedures; and

6. Eluting technetium-99m from generator systems, assaying and testing the elute for molybdenum-99 and alumina contamination, and processing the elute with reagent kits to prepare technetium-99m labeled radiopharmaceuticals.

(d) To satisfy the requirement for 500 hours of supervised clinical experience, training shall be under the supervision of an authorized user at a medical institution, and shall include:

1. Examining patients or human research subjects and reviewing their case histories to determine suitability for radionuclide diagnosis, limitations, or contraindications;
2. Selecting the suitable radiopharmaceuticals and calculating and measuring the dosages;

3. Administering dosages to patients or human research subjects and using syringe radiation shields;

4. Collaborating with the authorized user in the interpretation of radionuclide test results; and

5. Patient or human research subject follow-up; or

(3) Has successfully completed a six (6) month training program in nuclear medicine approved by the Accreditation Council for Graduate Medical Education that included:

- (a) Classroom and laboratory training;
- (b) Work experience; and
- (c) Supervised clinical experience in the topics identified in this section.

Section 51. Training for Therapeutic Use of Radiopharmaceuticals. Except as provided in Section 56 of this administrative regulation, the licensee shall require the authorized user of a radiopharmaceutical listed in Section 35 of this administrative regulation for therapy to be a physician who:

(1) Is certified in ~~[by]~~:

(a) Nuclear medicine by the American Board of Nuclear Medicine; ~~[or]~~

(b) ~~[The American Board of Radiology in]~~ Radiology, therapeutic radiology or radiation oncology by the American Board of Radiology;

(c) Nuclear medicine or radiation oncology by the American Osteopathic Board of Radiology after 1984; or

(d) Nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or

(2) Has completed eighty (80) hours of instruction in basic radionuclide handling techniques applicable to the use of therapeutic radiopharmaceuticals, and has supervised clinical experience.

(a) To satisfy the requirement for instruction, eighty (80) hours of classroom and laboratory training shall include:

1. Radiation physics and instrumentation;
2. Radiation protection;
3. Mathematics pertaining to the use and measurement of radioactivity; and
4. Radiation biology.

(b) To satisfy the requirement for supervised clinical experience, training shall be under the supervision of an authorized user at a medical institution, and shall include use of:

1. Iodine-131 for diagnosis of thyroid function and the treatment of hyperthyroidism or cardiac dysfunction in ten (10) individuals;

2. Soluble phosphorus-32 for the treatment of ascites, polycythemia vera, leukemia, or bone metastases in three (3) individuals;

3. Iodine-131 for treatment of thyroid carcinoma in three (3) individuals; ~~[and]~~

4. Colloidal chromic phosphorus-32 or of colloidal gold-198 for intracavitary treatment of malignant effusions in three (3) individuals; and

5. Strontium-89 as strontium chloride for the treatment of pain associated with bone metastases in three (3) individuals.

Section 52. Training for Therapeutic Use of Brachytherapy Sources. Except as provided in Section 56 of this administrative regulation, the licensee shall require the authorized user using a brachytherapy source specified in Section 41 of this administrative regulation for therapy to be a physician who:

(1) Is certified in:

(a) Radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology;

(b) Radiation oncology by the American Osteopathic Board of Radiology;

(c) Radiology, with a specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology"; or

(d) Therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; or

(2)(a) Is in the active practice of therapeutic radiology, and has completed:

1. 200 hours of instruction in basic radionuclide handling techniques applicable to the therapeutic use of brachytherapy sources;
2. 500 hours of supervised work experience; and
3. A minimum of three (3) years of supervised clinical experience.

(b) To satisfy the requirement for instruction, 200 hours of classroom and laboratory training shall include:

1. Radiation physics and instrumentation;
2. Radiation protection;
3. Mathematics pertaining to the use and measurement of radioactivity; and
4. Radiation biology.

(c) To satisfy the requirement for 500 hours of supervised work experience, training shall be under the supervision of an authorized user at a medical institution, and shall include:

1. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
2. Checking survey meters for proper operation;
3. Preparing, implanting, and removing sealed sources;
4. Using administrative controls to prevent the misadministration of radioactive material; and
5. Using emergency procedures to control radioactive material.

(d) To satisfy the requirement for a period of supervised clinical experience, training shall include one (1) year in a formal training program approved by the Residency Review Committee for Radiology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association, and an additional two (2) years of clinical experience in therapeutic radiology under the supervision of an authorized user at a medical institution. The supervised clinical experience shall include:

1. Examining individuals and reviewing their case histories to determine suitability for brachytherapy treatment, and limitations or contraindications;
2. Selecting the proper brachytherapy sources, dose, and method of administration;
3. Calculating the dose; and
4. Postadministration follow-up and review of case histories in collaboration with the authorized user.

Section 53. Training for Teletherapy. Except as provided in Section 56 of this administrative regulation, the licensee shall require the authorized user of a sealed source specified in 902 KAR 100:017, Section 2, in a teletherapy unit to be a physician who:

(1) Is certified in:

(a) Radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology;

(b) Radiation oncology by the American Osteopathic Board of Radiology;

(c) Radiology, with specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology"; or

(d) Therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; or

(2)(a) Is in the active practice of therapeutic radiology, and has completed:

1. 200 hours of instruction in basic radionuclide techniques applicable to the use of a sealed source in a teletherapy unit;
2. 500 hours of supervised work experience; and
3. A minimum of three (3) years of supervised clinical experience.

(b) To satisfy the requirement for instruction, the classroom and laboratory training shall include:

1. Radiation physics and instrumentation;
2. Radiation protection;
3. Mathematics pertaining to the use and measurement of radioactivity; and
4. Radiation biology.

(c) To satisfy the requirement for supervised work experience, training shall be under the supervision of an authorized user at an institution, and shall include:

1. Review of the full calibration measurements and periodic spot checks;
2. Preparing treatment plans and calculating treatment times;
3. Using administrative controls to prevent misadministrations;
4. Implementing emergency procedures to be followed in the event of the abnormal operation of a teletherapy unit or console; and
5. Checking and using survey meters.

(d) To satisfy the requirement for a period of supervised clinical experience, training shall include:

1. One (1) year in a formal training program approved by the Residency Review Committee for Radiology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association; and
2. An additional two (2) years of clinical experience in therapeutic radiology under the supervision of an authorized user at a medical institution. The supervised clinical experience shall include:

- a. Examining individuals and reviewing their case histories to determine suitability for teletherapy treatment, and limitations or contraindications;
- b. Selecting the proper dose and how it is to be administered;
- c. Calculating the teletherapy doses and collaborating with the authorized user in the review of patients' or human research subjects' progress and consideration of the need to modify originally prescribed doses as warranted by patients' or human research subjects' reaction to radiation; and
- d. Postadministration follow-up and review of case histories.

Section 54. Training for Ophthalmic Use of Strontium-90. Except as provided in Section 56 of this administrative regulation, the licensee shall require the authorized user using only strontium-90 for ophthalmic radiotherapy to be a physician who is:

(1) Certified in radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology; or

(2) In the active practice of therapeutic radiology or ophthalmology, and has completed twenty-four (24) hours of instruction in basic radionuclide handling techniques applicable to the use of strontium-90 for ophthalmic radiotherapy and a period of supervised clinical training in ophthalmic radiotherapy.

(a) To satisfy the requirement for instruction, the classroom and laboratory training shall include:

1. Radiation physics and instrumentation;
2. Radiation protection;
3. Mathematics pertaining to the use and measurement of radioactivity; and
4. Radiation biology.

(b) To satisfy the requirement for a period of supervised clinical

training in ophthalmic radiotherapy, training shall be under the supervision of an authorized user at a medical institution and shall include the use of strontium-90 for the ophthalmic treatment of five (5) individuals that includes:

1. Examination of each individual to be treated;
2. Calculation of the dose to be administered;
3. Administration of the dose; and
4. Follow-up and review of each individual's case history.

Section 55. Training for Use of Sealed Sources for Diagnosis. Except as provided in Section 56 of this administrative regulation, the licensee shall require the authorized user, using a sealed source in a device specified in Section 39 of this administrative regulation, to be a physician, dentist, or podiatrist who:

(1) Is certified in:

(a) Radiology, diagnostic radiology [~~with special competence in nuclear radiology~~], therapeutic radiology, or radiation oncology by the American Board of Radiology;

(b) Nuclear medicine by the American Board of Nuclear Medicine;

(c) Diagnostic radiology or radiology by the American Osteopathic Board of Radiology; or

(d) Nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or

(2) Has completed eight (8) hours of classroom and laboratory instruction in basic radionuclide handling techniques specifically applicable to the use of the device. To satisfy the requirement for instruction, the training shall include:

(a) Radiation physics, mathematics pertaining to the use and measurement of radioactivity, and instrumentation;

(b) Radiation biology; and

(c) Radiation protection and training in the use of the device for the purposes authorized by the license.

Section 56. Training for Experienced Authorized Users. Practitioners of the healing arts identified as authorized users for ~~the~~ human use of radioactive material on a ~~the~~ cabinet, another agreement state, or U. S. Nuclear Regulatory Commission license, before June 27, 1990, who perform only those methods of use for which they were authorized on that date, need not comply with the training requirements of Section 47 through Section 55 of this administrative regulation.

Section 57. Physician Training in a Three (3) Month Program. A physician who, before July 1, 1984, began a three (3) month nuclear medicine training program approved by the Accreditation Council for Graduate Medical Education and has successfully completed the program, shall be exempted from the requirements of Section 49 or 50 of this administrative regulation.

Section 58. Training for an Authorized Nuclear Pharmacist. The licensee shall require the authorized nuclear pharmacist to be a pharmacist who:

(1) Has current board certification as a nuclear pharmacist by the Board of Pharmaceutical Specialties; or

(2) Has completed 700 hours in a structured educational program consisting of:

(a) Didactic training in the following areas:

1. Radiation physics and instrumentation;

2. Radiation protection;

3. Mathematics pertaining to the use and measurement of radioactivity;

4. Chemistry of radioactive material for medical use;

5. Radiation biology; and

(b) Supervised experience in a nuclear pharmacy involving:

1. Shipping, receiving, and performing related radiation surveys;

2. Using and performing checks for proper operation of dose calibrators, survey meters, and, if appropriate, instruments used to

measure alpha-or beta-emitting radionuclides;

3. Calculating, assaying, and safely preparing dosages for patients or human research subjects;

4. Using administrative controls to avoid mistakes in the administration of radioactive material;

5. Using procedures to prevent or minimize contamination and using proper decontamination procedures; and

(c) Has obtained written certification, signed by a preceptor authorized nuclear pharmacist, that the above training has been satisfactorily completed and the individual has achieved a level of competency sufficient to independently operate a nuclear pharmacy.

Section 59. Recentness of Training. The training and experience specified in Sections 47 through 58 ~~[55]~~ of this administrative regulation shall have been obtained within the seven (7) ~~[five (5)]~~ years preceding the date of application or the individual shall have had continuing applicable experience since the required training and experience was completed.

Section 60. Training for Experienced Nuclear Pharmacists. (1) A licensee shall apply for and receive a license amendment identifying an experienced nuclear pharmacist as an authorized nuclear pharmacist before the licensee allows the individual to work as an authorized nuclear pharmacist.

(2) A pharmacist who has completed a structured educational program as specified in Section 58 of this administrative regulation, before the effective date of this administrative regulation, and who is working in a nuclear pharmacy may qualify as an experienced nuclear pharmacist.

(3) An experienced nuclear pharmacist need not comply with the requirements of a preceptor statement as required by Section 58(2)(c) of this administrative regulation and recentness of training in Section 59 of this administrative regulation to qualify as an authorized nuclear pharmacist.

Section 61. Exemptions. A licensee possessing a Type A specific license of broad scope for medical use is exempt from the following:

(1) The provisions of Section 2(2) of this administrative regulation;

(2) The provisions of Section 2(5) of this administrative regulation regarding additions to or changes in the areas of use only at the addresses specified in the license; and

(3) Provisions of Section 2(6) of this administrative regulation regarding conducting research involving human subjects provided:

(a) The research is conducted, funded, supported, or regulated by a federal agency that has implemented the federal policy for the protection of human subjects;

(b) Informed consent is obtained from the human subjects; and

(c) Prior review and approval of the research activities are obtained from an institutional review board as defined and described in the federal policy for the protection of human subjects.

Section 62. Food and Drug Administration (FDA), Other Federal and State Requirements. Nothing in this administrative regulation relieves the license from complying with applicable FDA, other federal and state requirements governing radioactive drugs or devices.

Section 63. Material Incorporated by Reference. (1) The following is incorporated by reference: Federal Register, Volume 56, No. 117, Tuesday, June 18, 1991, Federal Policy for the Protection of Human Subjects, Department of Health and Human Services, 45 CFR Part 48; National Science Foundation, 45 CFR Part 690; Department of Transportation, 49 CFR Part 11.

(2) Federal Register, Volume 56, No. 117, Tuesday, June 18, 1991, Federal Policy for the Protection of Human Subjects, may be viewed or copied at the Office of the Commissioner of Health Services, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. until 4:30 p.m., Monday through Friday.

## ADMINISTRATIVE REGISTER - 209

RICE C. LEACH, Commissioner  
JOHN MORSE, Secretary

APPROVED BY AGENCY: June 9, 1997

FILED WITH LRC: June 12, 1997 at 2 p.m.

**PUBLIC HEARING:** A public hearing on this administrative regulation shall be held on July 21, 1997, at 9 a.m., at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by July 14, 1997, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made, in which case the person requesting the transcript shall be responsible for payment. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mae B. Lewis, Administrative Specialist Principal, Office of the Counsel, Cabinet for Health Services, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900, Fax: (502) 564-7573.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: John A. Volpe

(1) Type and number of entities affected: Approximately 100 medical licensees out of a total of 400 radioactive material licensees will be impacted by the amending of this regulation which will allow flexibility in preparing and compounding of radionuclides by a physician or nuclear pharmacist, and in the revised release criteria of patients receiving therapeutic radiopharmaceuticals.

(2) Direct and indirect costs or savings to those affected:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public hearing was requested and no comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public hearing was requested and no comments were received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing cost (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fees from the licensing of radioactive material users.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administration regulation, on:

(a) Geographical Area in which administrative regulation will be implemented: No comments were received.

(b) Kentucky: No comments were received.

(7) Assessment of alternative methods: reasons why alternatives were rejected: Amendment necessary to maintain compatibility with the U.S. Nuclear Regulatory Commission's requirements.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The amended regulation provides physicians and pharmacists with flexibility in the preparing and compounding radiopharmaceuticals and in the release of patients receiving therapeutic radiopharmaceuticals.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: Physicians and nuclear pharmacists would not have the needed flexibility to prepare and compound radiopharmaceuticals and in the release of patients receiving therapeutic radiopharmaceuticals.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict with statutes or administrative regulations.

(a) Necessity of regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: Not applicable.

(11) TIERING: Is tiering applied? Yes, only medical licensees who utilize radioactive material in the healing arts will be impacted by the revisions to this regulation.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Atomic Energy Act of 1954, as amended, and 10 CFR 35, as promulgated by the U.S. Nuclear Regulatory Commission.

2. State compliance standards. Administrative regulation provides requirements for licensing of radioactive material, for possession, use, and transfer for medical use.

3. Minimum or uniform standards contained in the federal mandate. This amendment will bring about compatibility with U.S. Nuclear Regulatory Commission's requirements.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

### CABINET FOR FAMILIES AND CHILDREN Department for Social Insurance Division of Management and Development (Amendment)

#### 904 KAR 3:020. Financial requirements.

RELATES TO: KRS 194.050, 7 CFR 273.1, 273.2, 273.8, 273.9, 273.10, 273.11, 273.12, 7 USC 2014, 2017(d), PL 104-193, sec. 911  
STATUTORY AUTHORITY: KRS 194.050, 7 CFR 271.4, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Insurance and its programs under the Cabinet for Families and Children. The Cabinet for Families and Children has responsibility to administer a Food Stamp Program. KRS 194.050 provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This administrative regulation sets forth the financial eligibility requirements used by the cabinet in the administration of the Food Stamp Program.

Section 1. Financial Eligibility Requirements. (1) Pursuant to federal [in accordance with] regulations promulgated by the Food and Consumer Service, of the United States Department of Agriculture, national uniform standards of financial eligibility for the Food Stamp

## ADMINISTRATIVE REGISTER - 210

Program shall be composed of the following criteria:

- (a) Income limitations; and
- (b) Resource limitations.
- (2) Participation in the program shall be limited to those households whose incomes are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet.
- (3) The income eligibility standards shall be derived from the Office of Management and Budget's nonfarm income poverty guidelines.

Section 2. Countable Income. All income from any source shall be counted, except income specifically excluded in Section 3 of this administrative regulation, including:

- (1) Wages earned by a household member, including all wages received by a striker in accordance with the provision at 904 KAR 3:035, Section 5 [6](9).
- (2) The gross income of a self-employment enterprise, including the total gain from the sale of any capital goods or equipment related to the business, excluding the cost of doing business;
- (3) Training allowance from vocational and rehabilitative programs recognized by federal, state or local governments, to the extent that they are not reimbursements;
- (4) Payments under 42 USC 1451 shall be considered earned income unless specifically excluded in Section 3 of this administrative regulation;
- (5) The earned or unearned income of an ineligible household member or nonhousehold member pursuant to as set forth in 904 KAR 3:035, Section 5 [6](3) and 4;
- (6) Assistance payments from federal or federally aided public assistance including:
  - (a) Supplemental security income;
  - (b) Kentucky Transitional Assistance Program ~~[Aid to families with dependent children]~~;
  - (c) General assistance programs; or
  - (d) Other assistance programs based on need;
- (7) Annuities;
- (8) Pensions;
- (9) Retirement, veteran's or disability benefits;
- (10) Worker's or unemployment compensation;
- (11) Strike pay;
- (12) Old-age survivors or Social Security benefits;
- (13) Foster care payments for children or adults, except as excluded in Section 3(16) of this administrative regulation;
- (14) Gross income minus the cost of doing business derived from rental property in which a household member is not actively engaged in the management of the property at least twenty (20) hours a week;
- (15) Wages earned by a household member which are garnished or diverted by an employer and paid to a third party for a household expense;
- (16) Support or alimony payments made directly to the household from nonhousehold members. This includes any portion of such payments returned to the household by the cabinet;
- (17) The portion of scholarships, educational grants, fellowships, deferred payment loans for education, and veterans educational benefits which are not excludable pursuant to under Section 3(6) of this administrative regulation;
- (18) Payments from government sponsored programs, dividends, interest, royalties, and all other direct money payments from any source which can be construed to be a gain or benefit;
- (19) Monies withdrawn or dividends which are or could be received from a trust fund;
- (20) That amount of monthly income of an alien's sponsor and the sponsor's spouse (if living with the sponsor) that has been deemed to be that of the alien as set forth in 904 KAR 3:035, Section 5(11) [6(12)];
- (21) The portion of means tested Assistance monies from a federal, state, or local welfare program which are withheld for

purposes of recouping an overpayment which resulted from the household's intentional failure to comply with that program's requirements;

(22) Earnings of ~~[te]~~ an individual who is participating in on-the-job training programs under 29 USC 1501 unless the individual is under nineteen (19) years of age and under the parental control of another adult member; and

(23) Portions of Indian Per Capita payments made pursuant to 25 USC 459, 25 USC 1261, and 25 USC 1401 in excess of \$2,000 per payment per individual, effective September 1, 1989.

Section 3. Income Exclusions. The following payments shall not be considered as income:

- (1) Money withheld from an assistance payment, earned income or other income source, or monies received from any income source which are voluntarily or involuntarily returned, to repay a prior overpayment received from that income source, except as specified in Section 2(21) ~~[(44)]~~ of this administrative regulation;
- (2) Child support income shall be considered as follows:
  - (a) Child support payments received by recipients of the Kentucky Transitional Assistance Program ~~[Aid to Families with Dependent Children]~~ which must be transferred to the Division of Child Support Enforcement to maintain eligibility for Kentucky Transitional Assistance Program ~~[Aid to Families with Dependent Children]~~ benefits, shall be excluded;
  - (b) Any portion of child support monies returned to the household receiving Kentucky Transitional Assistance Program benefits ~~[Aid to Families with Dependent Children]~~ by the cabinet shall not be excluded;
  - (3) Any gain or benefit which is not in the form of money payable directly to the household;
  - (4) Money payments that are not legally obligated and otherwise payable directly to a household, but are paid to a third party for a household expense;
  - (5) Any income in the certification period which is received too infrequently or irregularly to be reasonably anticipated, but not in excess of thirty (30) dollars in a quarter;
  - (6) Educational income shall be excluded as follows:
    - (a) Educational income, including:
      1. Educational loans on which payment is deferred;
      2. Grants;
      3. Scholarships;
      4. Fellowships;
      5. Veteran educational benefits;
      6. And the like;
    - (b) Awarded to a household member enrolled at one (1) of the following recognized institutions as defined by 904 KAR 3:010, Section 1(22):
      1. Institution of postsecondary education;
      2. School for persons with a disability;
      3. Vocational education program; or
      4. A program that provides for completion of a secondary school diploma or the equivalent thereof;
    - (c) Is excluded to the extent that it does not exceed the amount used for or made available as an allowance determined by such:-
      1. School;
      2. Institution;
      3. Program; or
      4. Other grantor; for
    - (d) Expenses of the student, including:
      1. Tuition;
      2. Mandatory fees related to the pursuit of the course of study involved, including the rental or purchase of any:
        - a. Equipment;
        - b. Material; and
        - c. Supplies;
      3. Books;

4. Supplies;
5. Transportation;
6. ~~Other~~ Miscellaneous personal expenses (other than room and board ~~[living expenses]~~);
7. Origination fees for educational ~~[such]~~ loans; and
8. Insurance premiums for educational ~~[such]~~ loans; and
9. Dependent care.

(e) Dependent care costs which exceed the amount excludable from income shall be deducted from income pursuant to Section 5 of this administrative regulation.

(f) An educational loan on which repayment must begin within sixty (60) days after receipt of the loan shall not be considered a deferred repayment loan.

(7) All loans from private individuals or commercial institutions, other than educational loans on which repayment is deferred;

(8) Reimbursements for past or future expenses, other than normal living expenses, to the extent they do not exceed actual expenses, and do not represent a gain or benefit to the household;

(9) Money received and used for the care and maintenance of a third party beneficiary who is not a household member;

(10) The earned income of a child who is:

(a) A member of the household;

(b) An elementary or secondary school student; and

(c) Age seventeen (17) ~~[twenty-one (21)]~~ years or younger;

(11) Money received in the form of a nonrecurring lump-sum payment;

(12) The cost of producing self-employment income. If the cost of producing farm self-employment income exceeds the income derived from self-employment farming, such losses shall be offset against any other countable income in the household;

(13) Any income specifically excluded by any other federal statute from consideration as income for the purpose of determining eligibility for the Food Stamp Program;

(14) Energy assistance payments or allowances that are made pursuant to [under]:

(a) Any federal law, except 42 USC 601 et seq., including utility reimbursements made by:

1. The Department of Housing and Urban Development; and

2. Rural and Economic Community and Development; or

(b) A one (1) time payment or allowance made pursuant to a federal or state law for the costs of:

1. Weatherization; or

2. Emergency repair; or

3. Replacement of an:

a. Unsafe; or

b. Inoperative furnace; or

c. Other heating or cooling device. ~~[A state or local law if certified as excludable energy payments by the Food and Consumer Service;]~~

(15) Cash donations based on need received from nonprofit charitable organizations, not to exceed \$300 in a federal fiscal year quarter;

(16) Foster care payments for foster children when the household requests that the foster children be excluded from the household in determining eligibility;

(17) Up to \$12,000 to Aleuts and \$20,000 to individuals of Japanese ancestry for payments made by the U.S. to compensate for hardships experienced during World War II;

(18) Monies received under Section 3507 of the Internal Revenue Code (advanced payment of earned income credit);

(19) Indian Per Capita payments made pursuant to 25 USC 459, 25 USC 1261 and 25 USC 1401, as distribution from judgment awards and trust funds of \$2,000 or less per individual per payment.

(20) Any amount of income necessary for the fulfillment of an approved plan for achieving self-support of a household member pursuant to [as provided under] 42 USC 1382a(b)(4)(B)(iv);

(21) On-the-job training payments that are received pursuant to 29 USC 1630 through 1635.

Section 4. Income Eligibility Standards. Participation in the Food Stamp Program shall be limited to those households whose incomes fall at or below the applicable standards as established by the Food and Consumer Service and which are set forth below:

(1) Households which contain a member who is elderly or has a disability as defined in 904 KAR 3:010, Section 1(9) or (11) shall have their net income compared to 100 percent of the federal income poverty guidelines.

(2) Households in which all members are recipients of the Kentucky Transitional Assistance Program ~~[Aid to Families with Dependent Children]~~ or Supplemental Security Income shall be categorically eligible and shall not be required to meet either the gross or net income eligibility standards.

(3) All other households shall have their gross income (total income after excluded income has been disregarded but before any deductions have been made) compared to 130 percent of the federal income poverty guidelines and their net income compared to 100 percent of the federal income poverty guidelines.

Section 5. Income Deductions. The following shall be allowable income deductions:

(1) A standard deduction per household per month which shall be periodically adjusted by the Food and Consumer Service to reflect changes in the cost of living for a prior period of time as determined by the Food and Consumer Service;

(2) Twenty (20) percent of gross earned income that is reported within ten (10) days of the date that the change of income becomes known to the household;

(3) Payments for the actual cost for the care of:

(a) A child; or

(b) Other dependent;

(c) Not to exceed:

1. \$200 per month per dependent child under age two (2); and

2. \$175 per month for each other dependent;

(d) When necessary for a household member to:

1. Seek, accept or continue employment;

2. Attend training; or

3. Pursue education preparatory to employment;

(4) The monthly shelter cost deduction shall be determined as follows:

(a) Monthly shelter cost in excess of fifty (50) percent of the household's income after all other allowable deductions have been made.

(b) The shelter deduction shall not exceed the excess shelter maximum established by the Food and Consumer Service, except that households containing an elderly or disabled member shall not be subject to the maximum.

(c) The excess shelter maximum shall be adjusted periodically by the Food and Consumer Service to reflect changes in the cost of living for a prior period of time.

(d) Allowable monthly shelter expenses shall include the following expenses:

1. Continuing charges for the shelter occupied by the household, including rent, mortgage, or other continuing charges leading to the ownership of the shelter such as loan repayments for the purchase of a mobile home, including interest on the payments;

2. Property taxes, state and local assessments, and insurance on the structure itself, but no separate cost of insuring furniture or personal belongings;

3. The cost of:

a. Heating and cooking fuel;

b. Cooling;

c. Electricity;

d. Water and sewage;

e. Garbage and trash collection fees;

f. The telephone standard deduction; and

g. Fees charged by the utility provider for the initial installation of

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the utility;

4. The shelter costs for the home if temporarily not occupied by the household because of:

- a. Employment or training away from home;
- b. Illness; or
- c. Abandonment caused by a natural disaster or casualty loss;

and

d. If the household intends to return to the home;

e. The current occupants of the home are not claiming the shelter costs for food stamp purposes; and

f. The home is not leased or rented during the absence of the household; and

5. Charges for the repair of the home which was substantially damaged or destroyed due to a natural disaster such as a fire or flood, unless such costs are reimbursed by:

- a. Private or public relief agencies;
- b. Insurance companies; or
- c. From any other source.

(e) The cabinet shall develop a standard utility allowance for use in calculating shelter cost for those households which receive Low Income Home Energy Assistance Program benefits or which incur heating or cooling (by air conditioning units only) costs separate and apart from their rent or mortgage payments.

(f) If the household is not entitled to the utility standard or the homeless [shelter] standard allowance, the household will be given the option of choosing between actual utility expenses and the basic utility allowance.

1. The basic utility allowance shall be adjusted annually; and
2. Shall be allowed as an option to a household that is billed for:
  - a. Electricity (nonheating and noncooling);
  - b. Water or sewage;
  - c. Garbage or trash; or
  - d. Cooking fuel.

(g) The standard utility allowance shall be adjusted at least annually to reflect changes in the cost of utilities.

(5) [(h)] The cabinet shall use a homeless [shelter] standard allowance of shelter expenses for households in which all members are homeless and are not receiving free shelter throughout the calendar month, unless that household verifies higher expenses.

(6) [(5)] Allowable medical expenses, excluding special diets, in excess of thirty-five (35) dollars per month incurred by any household member who meets the definition of being elderly or having a disability as specified by 904 KAR 3:010, Section 1(9) and (11) [(40)], including, but not limited to:

- (a) Medical and dental care;
- (b) Hospitalization or outpatient treatment and nursing care;
- (c) Medication and medical supplies;
- (d) Health and hospitalization premiums; and
- (e) Dentures, hearing aids, eyeglasses and prosthetics.

(7) [(6)] Actual child support payments made by a household member shall be allowed as a deduction if:

(a) The household member is legally obligated to pay child support; and

(b) Verification is provided showing payments are currently being made.

Section 6. Resources. (1) Uniform national resource standards of eligibility shall be utilized.

(2) Eligibility shall be denied or terminated if the total value of a household's liquid and nonliquid resources, not exempt under Section 7 of this administrative regulation exceed:

- (a) \$3000 for all households with one (1) or more members, when at least one (1) member is sixty (60) years or older; or
- (b) \$2000 for any other household.

(3) A household which is categorically eligible as specified in Section 4(2) of this administrative regulation shall be considered as having met the food stamp resource requirement.

(4) A household member who receives benefits from Kentucky Transitional Assistance Program [~~Aid to Families with Dependent Children~~] or Supplemental Security Income shall be considered categorically eligible and to have satisfied the Food Stamp Program's resource limits as specified in subsection (2) of this section.

Section 7. Exempt Resources. The following resources shall not be considered in determining eligibility:

(1) The home and surrounding property which is not separated from the home by intervening property owned by others;

(2) Household goods;

(3) Personal effects;

(4) [~~including~~] One (1) burial plot per household member;

(5) [(4)] The cash value of life insurance policies; [~~and~~]

(6) [(5)] Pension funds (except that Keogh plans which involve no contractual relationship with individuals who are not household members and Individual Retirement Accounts shall not be exempt);

(7) The value of one (1) [(6)] prepaid burial plan per household member shall be excluded as follows:

(a) The entire value of a prepaid burial plan shall be excluded if, prior to the date the household member becomes eligible to participate in the Food Stamp Program, the money is not accessible to the household because it is held in an active irrevocable funeral trust agreement with the funeral home as the agent; or

(b) The equity value of a prepaid burial plan that is accessible to the household shall be excluded up to an amount of \$1,500; [~~plans if a contractual agreement for repayment must be signed in order to withdraw any funds;~~]

(8) [(7)] Licensed or unlicensed vehicles that are excluded pursuant to [~~as specified in~~] Section 8 of this administrative regulation;

(9) [(8)] Property which annually produces income consistent with its fair market value, even if only used on a seasonal basis;

(10) [(9)] Property which is essential to the employment or self-employment of a household member;

(11) [(10)] Installment contracts for the sale of land or buildings if the contract or agreement is producing income consistent with its fair market value;

(12) [(11)] Any governmental payments which are designated for the restoration of a home damaged in a disaster, if the household is subject to legal sanction if funds are not used as intended;

(13) [(12)] Resources whose cash value is not accessible to the household;

(14) [(13)] Resources which have been prorated as income;

(15) [(14)] Indian lands held jointly with the tribe, or land that can be sold only with the approval of the Department of the Interior's Bureau of Indian Affairs;

(16) [(15)] Resources which are excluded for food stamp purposes by express provision of federal statute;

(17) [(16)] Up to \$12,000 to Aleuts and \$20,000 to individuals of Japanese ancestry for payments made by the U.S. to compensate for hardships experienced during World War II;

(18) [(17)] Income which is withheld by the employer to pay certain expenses directly to a third party as a vendor payment to the extent that the remainder of the withheld income is not accessible to the household at the end of the year;

(19) [(18)] Indian per capita payments made pursuant to 25 USC 459, 25 USC 1261, and 25 USC 1401, as distribution from judgment awards and trust funds, of \$2,000 or less per individual per payment.

(20) [(19)] Purchases of \$2,000 or less which are made solely with Indian per capita payments after December 31, 1981 but prior to January 12, 1983;

(21) [(20)] The earned income tax credit income received by any member of the household for a period of twelve (12) months from receipt if the member was:

(a) Participating in the Food Stamp Program at the time the credits were received; and

(b) Participated in the program continuously during the twelve (12)

month period of exclusion; and

(22) [(24)] A resource, except a vehicle, which cannot be sold for a significant amount of funds for the support of the household.

Section 8. Vehicles. (1) The entire value of any licensed vehicle shall be excluded if the vehicle is:

(a) Used over fifty (50) percent of the time for income producing purposes;

(b) Annually producing income consistent with its fair market value, even if used only on a seasonal basis;

(c) Necessary for long distance travel, other than daily commuting, that is essential to the employment of a:

1. Household member; or
2. Ineligible alien; or
3. Disqualified person; if:
4. The resources of the individual are being considered available to the household.

(d) Used as the household's home;

(e) Necessary to transport a:

1. Household member with a physical disability, ineligible alien, or disqualified person, if:

a. The resources of the individual are being considered available to the household; and

b. Regardless of the purpose of the transportation.

2. The exclusion is limited to one (1) vehicle per physically disabled household member.

3. A vehicle shall be considered necessary for the transportation of a household member with a physical disability if:

a. The vehicle is specially equipped to meet the specific needs of the person with a disability; or

b. The vehicle is a special type of vehicle that makes it possible to transport the disabled person; however

c. The vehicle need not have special equipment or be used primarily by or for the transportation of the household member with a physical disability to be excluded.

(f) The value of a vehicle that a household depends upon to carry fuel for heating or water for home use when such transported fuel or water is the primary source of fuel or water for the household;

(2) The exclusion in subsection (1)(a) through (d) of this section shall apply when the vehicle is not in use because of temporary unemployment.

(3) A licensed vehicle not excluded under subsection (1) of this section shall:

(a) Individually be evaluated for fair market value; and

(b) That portion of the value which exceeds \$4,650 [4550] shall be attributed in full toward the household's resource level, regardless of any encumbrances on the vehicles.

(4) A licensed vehicle shall also be evaluated for its equity value, except for:

(a) A vehicle excluded in subsection (1) of this section;

(b) One (1) licensed vehicle per household, regardless of the use of the vehicle; and

(c) Any other vehicle used to transport:

1. A household member; or

a. An ineligible alien; or

b. A disqualified household member; whose

c. Resources are being considered available to the household;

2. To and from:

a. Employment; or

b. Training; or

c. Education which is preparatory to employment; or

d. To seek employment in compliance with the Food Stamp Employment and Training Program as specified in 904 KAR 3:042 [3:044].

(5) A vehicle customarily used to commute to and from employment shall be covered by this equity exclusion during a temporary period of unemployment.

(6) The equity value of a licensed vehicle not covered by this exclusion, and of an unlicensed vehicle not excluded by Section 7(7), (8) and (9) of this administrative regulation shall be attributed toward the household's resource level.

(7) In the event a licensed vehicle is assigned both a fair market value in excess of \$4,650 [4,550] and an equity value, only the greater of the two (2) amounts shall be counted as a resource.

Section 9. Transfer of Resources. A household which has transferred resources knowingly for the purpose of qualifying or attempting to qualify for food stamps shall be disqualified from participation in the program for up to one (1) year from the date of the discovery of the transfer.

Section 10. Failure to Comply with Other Programs. (1) Except as provided in subsection (2) of this section, if the benefits of a household are reduced under a federal, state, or local law relating to a means-tested public assistance program for the failure of a member of the household to perform an action required under the law or program, for the duration of the reduction, the food stamp allotment of the household shall be reduced by twenty-five (25) percent.

(2) If the benefits of a household are reduced pursuant to a federal, state, or local law relating to a means-tested public assistance program for the failure of a household member to perform a work requirement, the individual shall be subject to the disqualification procedures pursuant to the 904 KAR 3:042.

JOHN L. CLAYTON, Commissioner

VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: June 11, 1997

FILED WITH LRC: June 13, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1997, at 9 a.m. at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by July 14, 1997, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made, in which case the person requesting the transcript shall be responsible for payment. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judy H. Trigg, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900, (502) 564-7573 (fax).

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: The provisions that are being incorporated into this administrative regulation as a result of the implementation of PL 104-193, sections 807, 808, 809, 810, 829, and 911 are mandatory changes to the financial eligibility criteria of the Food Stamp Program. These changes affect the method of excluding the earnings of children, weatherization payments, the earned income deduction to households that fail to timely report income changes, homeless shelter standard, and increases the vehicle resource exclusion. Sections 829 and 911 of the above-referenced law prohibits an increase in food stamp benefits as the result of a decrease in another means tested public assistance or welfare program due to the households failure to comply with the other programs eligibility requirements. To prevent an increase in food stamp benefits, states are permitted to use the sanctioning method

that is utilized in the other means tested program to sanction the food stamp household or reduce the food stamp allotment by an amount up to 25 percent. Due to the administrative complexity of trying to determine all of the reasons why an individual could be sanctioned in another means tested program, the Department has elected to use the method of reducing the food stamp allotment by 25 percent. Other changes that are incorporated into this administrative regulation include technical changes to the policy relating to the exclusion of student income and prepaid burial plans. These changes and clarifications are being incorporated into this administrative regulation as the result of federal regulations that were published as final regulations and must be implemented effective for March 1, 1997. A public hearing was held for the amendment to the administrative regulation. Only written comments were received by the cabinet and all requests were incorporated into the administrative regulation. The commenter suggested that for consistency, the term "educational loan" as used in Section 3(6)(d)8, should also be used in Section 3(6)(d)7. The department agrees with the commenter and shall incorporate the change into the administrative regulation. Further, the commenter requested that a recent clarification that was issued by the Food and Consumer Service (FCS) on April 15, 1997, relating to the exclusion of on-the-job training payments under the Job Training Partnership Act, Summer Youth Employment and Training Program, including Americorps payments, be incorporated into the administrative regulation. The department agrees with the commenter and shall incorporate the income exclusion with the filing of this administrative regulation. Last, relating to Section 5(2), the commenter requested that department define the term "timely". The department agrees with the commenter and shall delete the word "timely" and incorporate the requirement for reporting changes in a timely manner pursuant to 7 CFR 273.12(a)2. All of the changes that are incorporated into this administrative regulation are mandated. Some of the changes will have a positive impact on the food stamp households while other changes in policy will have a negative impact. The cabinet cannot determine the number of individuals that may be affected by the above-referenced changes in the federal law and regulations. The cabinet anticipates that the promulgation of this emergency administrative will not have a significant impact on any of the entities that will be affected the changes in food stamp policy.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: A public hearing was requested as a result of the publication of the Notice of Intent and written comments were received by the cabinet. However, no comments relating to the direct or indirect costs or savings were submitted.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: A public hearing was requested as a result of the publication of the Notice of Intent and written comments were received by the cabinet. However, no comments relating to the cost of doing business were submitted.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: This administrative regulation will not create any additional compliance, reporting or paperwork requirements.

2. Second and subsequent years: See item #1.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: 1997 - None. The provisions that are incorporated into this administrative regulation affect the financial eligibility determination for the Food Stamp Program. None of the changes being implemented will significantly increase or decrease the number of people who are eligible for food stamp benefits. Thus, the depart-

ment does not anticipate any additional administrative costs resulting the promulgation of this administrative regulation. Any cost or savings in food stamp benefits that are realized as a result of changes to financial eligibility criteria will be insignificant. Since food stamp benefits are 100 percent federally funded, a cost or savings will not have any impact on the state agency.

2. Continuing costs or savings: 1998 - Same as #1.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: No effect.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: 100 percent federal funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: A public hearing was requested as a result of the publication of the Notice of Intent and written comments were received by the cabinet. However, no comments relating to the economic impact of this administrative regulation were submitted.

(b) Kentucky: The same as item (6)(a).

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the cabinet is responsible to meet the federal requirements pursuant to PL 104-193, sections 807, 808, 809, and 810. However, sections 829 and 911 require the state agency to prevent an increase in the food stamp allotment when the benefits of a household are reduced in another means tested public assistance or welfare program due to the failure of the household to comply the program's eligibility requirements. To prevent an increase in food stamp benefits, states are permitted to use the sanctioning method that is utilized in the other means tested program to sanction the food stamp household or reduce the food stamp allotment by an amount up to 25 percent. Due to the administrative complexity of trying to determine all of the reasons why an individual could be sanctioned in another means tested program, the department has elected to use the method of reducing the food stamp allotment by 25 percent. Further, the exclusion of earnings under the Summer Youth Employment and Training Program is mandated by 7 USC 2014(l).

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a harmful effect on the environment and public health would result if not implemented: A detrimental effect on public health would result if this amendment is not implemented.

(c) If detrimental effect would result, explain detrimental effect: It is necessary to promulgate this administrative regulation to prevent the possible loss of federal funding (100 percent of food stamp benefits, 50 percent of federal match for administrative funds, and 100 percent of federal enhanced funding), due to the failure to implement the federal mandates of PL 104-193, sections 807 (7 USC 2014(d)), 808 (7 USC 2014(d)), 809 (7 USC 2014 (e)(2)), 809 (7 USC 2014 (e)(5)), 810 (7 USC 2014(g)), 829 and 911 (7 USC 2017), and 7 USC 2014(l).

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied since application of policy is applied in a like manner for all individuals as set forth through federal requirements.

## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 104-193, sections 807 (7 USC 2014(d)), 808 (7 USC 2014(d)), 809 (7 USC 2014 (e)(2)), 809 (7 USC 2014(e)(5)), 810 (7 USC 2014(g)), 829 and 911 (7 USC 2017), and 7 USC 2014(l). The federal regulations at 7 CFR 273.8 and 7 CFR 273.9. The federal regulations at 7 CFR 273.12(a)(2).

2. State compliance standards. This regulation pertains to financial requirements which are germane to the Food Stamp Program, as prescribed by the Food Stamp Act of 1977, as amended. There are no separate state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. The provisions of this administrative regulation are promulgated in accordance with the Food Stamp Act of 1977, as amended, and applied in a like manner on a statewide basis.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

**CABINET FOR FAMILIES AND CHILDREN**  
**Department for Social Insurance**  
**Division of Management and Development**  
**(Amendment)**

**904 KAR 3:042. Food Stamp Employment and Training Program.**

RELATES TO: KRS 194.050, 7 CFR 273.7, 7 USC 2015(d) [PL 104-66]

STATUTORY AUTHORITY: KRS 194.050, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Insurance and its programs under the Cabinet for Families and Children. The Cabinet for Families and Children is required to administer a Food Stamp Employment and Training Program. KRS 194.050 provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This administrative regulation sets forth the technical eligibility requirements used by the cabinet in the administration of the Food Stamp Employment and Training Program. [Administrative regulation 904 KAR 3:041 has expired and this administrative regulation corrects a deficiency on that administrative regulation that was found by the Interim Joint Committee on Health and Welfare by deleting an age factor to the priority status criteria listed in Section 3(2) of this administrative regulation.]

Section 1. Definitions. (1) "Conciliation" means a fifteen (15) day period that is used to determine why noncompliance with food stamp employment and training requirements occurred.

(2) "Exempt" means an individual who is excused by the agency from participation in the employment and training program.

(3) ~~["Primary wage earner" means the household member providing the most earned income in the prior two (2) months.]~~

(4) "Voluntary quit" means the household member voluntarily and without good cause quits a job of twenty (20) hours or more a week. [self termination of employment by a household member on a voluntary basis.]

(4) "Voluntary reduction in work effort" means the household member reduces his work effort, and after the reduction, the individual is working less than thirty (30) hours per week.

Section 2. Work Registration. (1) Except those meeting exempt

criteria in subsection (4) of this section, all household members shall be required to register for work:

(a) At the initial application for food stamps; and

(b) Every twelve (12) months following the initial application.

(2) Work registration shall be completed by:

(a) The member required to register; or

(b) The person making application for the household.

(3) Unless otherwise exempt, persons who are excluded household members of the food stamp case, shall be required to register for work during periods of disqualification. These individuals are:

(a) Ineligible aliens;

(b) Individuals disqualified for refusing to provide or apply for a Social Security number; and

(c) Individuals disqualified for intentional program violation.

(4) The following shall be exempt from work registration requirements:

(a) A person younger than sixteen (16) years of age or a person sixty (60) years of age or older;

(b) A person age sixteen (16) or seventeen (17) who is not a head of a household or who is attending school, or enrolled in an employment training program on at least a half-time basis;

(c) A person with a physical or mental disability;

(d) A household member subject to and complying with any work requirement in the Kentucky Transitional Assistance Program (K-TAP) [Aid to Families with Dependent Children Program];

(e) A parent or other household member who is responsible for the care of:

1. A dependent child under age six (6); or

2. An incapacitated person;

(f) A person who receives unemployment compensation or a person who has applied for, but has not yet begun to receive, unemployment compensation if that person was required to register for work with the Department for Employment Services as part of the unemployment compensation application process;

(g) A regular participant in a substance abuse or alcohol treatment and rehabilitation program;

(h) A person who is employed or self-employed and:

1. Working a minimum of thirty (30) hours weekly; or

2. Receiving weekly earnings at least equal to the federal minimum wage multiplied by thirty (30) hours;

(i) A migrant or seasonal farm worker who:

1. Meets the criteria in paragraph (h) of this subsection; and

2. Is under contract or similar agreement with an employer or crew chief to begin employment within thirty (30) days; or

(j) A student enrolled at least half time in any recognized school, training program, or institution of higher education, provided that those meeting student status have met the eligibility conditions in 904 KAR 3:025, Section 3.

(5) A household member who loses exemption status due to a change in circumstances that are subject to the reporting requirements of the Food Stamp Program shall work register:

(a) When the change is reported, if the change is:

1. A change in the source of income or in the amount of gross monthly income totaling more than twenty-five (25) dollars, unless the amount change is in a K-TAP [an Aid to Families with Dependent Children] grant;

2. Any change in household composition, including the addition or loss of a household member;

3. A change in residence and the resulting change in shelter costs;

4. The acquisition of a nonexempt licensed vehicle or loss of a vehicle exemption for a household member who has a physical disability;

5. A change in total resources that reach or exceed the allowable maximum; or

(b) At the household's next recertification if the change in

circumstance involves a change not subject to reporting requirements in paragraph (a) of this subsection.

(6) All nonexempt household members shall be subject to the following work requirements:

- (a) Keep the initial assessment interview;
  - (b) Provide requested verification by mail or in person;
  - (c) Participate in a Food Stamp Employment and Training Program if assigned;
  - (d) Respond to any request for additional information regarding employment status or availability for work;
  - (e) Report to an employer if referred by the food stamp employment and training worker or designee provided that the potential employment is not unsuitable as designated in Section 8 [7] of this administrative regulation; and
  - (f) Accept a bona fide offer of suitable employment at a wage not less than state or federal minimum wage.
- (7) Household members who are exempt or those completing the work registration requirements may volunteer to participate in the Food Stamp Employment and Training Program.
- (8) The food stamp employment and training worker shall explain to the food stamp applicant:
- (a) The work requirements for each nonexempt household member;
  - (b) The rights and responsibilities of the work registered household members; and
  - (c) The consequences of failing to comply.
- (9) Each household member required to register shall be notified in writing of the requirements in subsection (6) of this section.

Section 3. Employment and Training Participation. (1) Work registrants who reside in a county which offers a Food Stamp Employment and Training Program shall be required to participate in the Food Stamp Employment and Training Program based on priority status.

- (2) Priority status shall be determined if the work registrant:
  - (a) Has no high school diploma or general equivalency diploma (GED);
  - (b) Has no employment in the last twelve (12) months; ~~or~~
  - (c) Is a veteran; or
  - (d) Is subject to the work requirement pursuant to 904 KAR 3:025, Section 3(8).
- (3) Food stamp employment and training participants shall:
  - (a) Be placed in education, skills training, ~~or~~ job search activities, or workfare;
  - (b) Be reimbursed for miscellaneous and dependent care expenses, if otherwise eligible, up to:
    - 1. The child care maximum payments as specified in 904 KAR 2:017 not to exceed \$200 per month per child under two (2) years of age or \$175 per month per child for all other eligible dependent children for child care expenses incurred on or after September 1, 1994; and
    - 2. Twenty-five (25) dollars a month for miscellaneous expenses incurred while participating in the Food Stamp Employment and Training Program.
- (4) Those participants who do not meet the criteria in subsection (2) of this section shall not be selected to participate in a Food Stamp Employment and Training component unless they are adamant about participating.

Section 4. Components. (1) All counties offering the Employment and Training Program shall offer the following services and activities:

- (a) ~~[(1)]~~ Educational components shall be:
  - 1. ~~[(a)]~~ Literacy programs;
  - 2. ~~[(b)]~~ Adult basic education (ABE);
  - 3. ~~[(c)]~~ General equivalency diploma (GED); and
  - 4. ~~[(d)]~~ Community college.
- (b) ~~[(2)]~~ Skills training components shall be:

- 1. ~~[(a)]~~ Vocational school;
  - 2. ~~[(b)]~~ On-the-job training; and
  - 3. ~~[(c)]~~ Kentucky Domestic Violence Association (KDVA).
- (c) ~~[(3)]~~ Job search components shall be:
- 1. ~~[(a)]~~ Job seeking skills training;
  - 2. ~~[(b)]~~ Group job search; ~~and~~
  - 3. ~~[(c)]~~ Individual job search;
- (d) A workfare component titled the Work Experience Program (WEP).
- (2) An individual who selects to participate in the WEP component, pursuant to subsection (1)(d) of this section, shall be considered to have satisfied the work requirement pursuant to 904 KAR 3:025, Section 3(8), by:
- (a) Accepting the offer of a work site placement established by the Department for Employment Services; and
  - (b) Working at the assigned work site placement for the minimum monthly number of required hours pursuant to subsection (3) or (4) of this section.
- (3) The minimum number of hours that a WEP participant shall perform each month to satisfy the work requirement pursuant to 904 KAR 3:025, Section 3(8), shall be determined by comparing the monthly food stamp allotment to the Work Experience Program table that is incorporated into this administrative regulation by reference.
- (4) If the food stamp household's active members include more than one (1) individual who wants to satisfy the work requirement pursuant to 904 KAR 3:025, Section 3(8), through WEP, the minimum monthly number of work hours that each individual is required to perform shall be determined by:
- (a) Dividing the food stamp allotment by the number of individuals who are subject to the work requirement; and
  - (b) Comparing the individual pro rata share of the food stamp allotment to the Work Experience Program table.

Section 5. Conciliation. (1) When a food stamp employment and training participant fails to comply with Food Stamp Employment and Training Program requirements, a conciliation period shall be initiated.

- (2) Conciliation shall be used to:
  - (a) Determine the reason for the noncompliance; and
  - (b) Allow the participant the opportunity to resolve the problem in order to continue participation.
- (3) Conciliation lasts for fifteen (15) days and in that time the food stamp employment and training worker shall:
  - (a) Determine good cause for noncompliance; or
  - (b) Encourage the participant to resume food stamp employment and training activity; or
  - (c) Recommend disqualification for failure to comply with program requirements.
- (4) If the participant resumes food stamp employment and training activity, no further action is required toward applying a sanction.
- (5) If conciliation is unsuccessful and the participant does not provide good cause or refuses to comply, a disqualification shall be imposed.

Section 6. Determining Good Cause. (1) Good cause shall be determined in instances where:

- (a) The work registrant has failed to comply with:
  - 1. ~~[(a)]~~ Work registration requirements pursuant to ~~[(a)]~~ specified in Section 2 [4] of this administrative regulation;
  - 2. ~~[(b)]~~ Employment and training requirements pursuant to ~~[(a)]~~ specified in Section 3 of this administrative regulation; or
  - (b) Pursuant to Sections 1 and 9 of this administrative regulation, the household member has voluntarily and without good cause:
    - 1. Quit a job; or
    - 2. Reduced his work effort.
- ~~[(c)]~~ Voluntary quit requirements as specified in Section 9 of this administrative regulation.
- (2) Good cause for an individual described in subsection (1) of

~~this section [failing to meet work registration and employment and training requirements]~~ shall take into consideration the [include] circumstances beyond the control of the individual, ~~[registrant]~~ including:

- (a) Illness;
- (b) Illness of another household member requiring the presence of the registrant;
- (c) A household emergency;
- (d) Unavailability of transportation; and
- (e) Inadequate child care for children who have reached age six (6) but are under age twelve (12).

Section 7. Disqualification. [Sanctions in the Food Stamp Employment and Training Program.] (1) Disqualifications shall be imposed on a household member who is [as follows]:

(a) A mandatory participant who [if the nonprimary wage earner] fails to comply with the food stamp employment and training requirements, including work registration; or

(b) Is determined to have voluntarily and without good cause quit a job or reduced the work effort pursuant to Sections 1 and 9 of this administrative regulation.

(2) An individual who is determined to be disqualified from participation in the Food Stamp Program pursuant to subsection (1) of this section [the individual] shall be ineligible to receive food stamp benefits until the latter of the date the individual complies; or

(a) [for] Two (2) months for the first violation;

(b) Four (4) months for the second violation; and

(c) Six (6) months for the third or any subsequent violation.

[If the primary wage earner fails to comply with food stamp employment and training requirements, the entire household shall be ineligible to receive food stamp benefits for two (2) months.]

(3) [(2)] If a disqualification is imposed, the disqualified member shall make reapplication for food stamps or request that the member be added to an active food stamp case to initiate a cure for noncompliance following the minimum period of ineligibility pursuant to subsection (2) of this section.

(4) [(3)] Ineligibility pursuant to subsection [as outlined in subsections (1) and] (2) of this section continues until the ineligible member:

(a) Becomes exempt from the work registration; or [Leaves the household];

(b) Serves the disqualification period pursuant to subsection (2) of this section; and [Becomes exempt from work registration];

(c) Complies with the requirements of:

1. Work registration [requirements]; or

2. The Employment and Training Program.

[(d) The two (2) month disqualification period expires, whichever occurs first.]

(5) A disqualified [(4) if an ineligible] household member who joins a new household shall be treated as follows: [and:]

(a) The disqualified member shall remain [to the primary wage earner, the entire new household then becomes] ineligible for the remainder of the disqualification period pursuant to subsection (2) of this section; and [for]

(b) The disqualified individual's income and resources shall be counted together with the income and resources of the new household; and [to not the primary wage earner, only he remains ineligible for the remainder of the disqualification period.]

(c) The disqualified individual shall not be included in the household size when determining the food stamp allotment.

Section 8. Unsuitable Employment. Employment shall be considered unsuitable by the agency if:

(1) The wage offered is less than the highest of the following:

(a) The applicable federal minimum wage;

(b) The applicable state minimum wage; or

(c) Eighty (80) percent of the federal minimum wage if neither the federal nor state minimum wage is applicable.

(2) The employment offered is on a piece-rate basis and the average hourly yield the employee can reasonably expect to earn is less than the applicable hourly wage specified in subsection (1) of this section.

(3) The household member, as a condition of employment or continuing employment, is required to join, resign from, or refrain from joining any legitimate labor organization.

(4) The work offered is at a site subject to a strike or lockout at the time of the offer, unless the strike has been enjoined under 29 USC 178 and 45 USC 152.

(5) In addition, employment shall be considered unsuitable if the household member involved can demonstrate or the worker otherwise becomes aware that:

(a) The degree of risk to health and safety is unreasonable;

(b) The member is physically or mentally unsuited to perform the employment. This shall be documented by medical evidence or by reliable information from other sources;

(c) The employment offered within the first thirty (30) calendar days of registration is not in the member's major field of experience as demonstrated by the individual or if the worker otherwise becomes aware;

(d) Daily commuting time exceeds two (2) hours a day, not including transporting a child to and from a child care facility;

(e) The distance to the place of employment prohibits walking and neither public nor private transportation is available to transport the member to the job site; or

(f) The working hours or nature of the employment interferes with the member's religious observances, convictions or beliefs.

Section 9. Voluntary Quit. (1) An individual who meets the definition of voluntary quit or voluntary reduction in work effort, pursuant to Section 1(3) and (4) of this administrative regulation, [A primary wage earner who voluntarily quits a job of twenty (20) hours or more a week] without good cause sixty (60) days or less prior to the date of food stamp application shall not be eligible to participate in the program.

(2) The disqualification period for an individual described in subsection (1) of this section shall be imposed pursuant to Section 7 of this administrative regulation. [voluntary quit shall be:

(a) Ninety (90) days from the date of quit if the individual is an applicant; and

(b) Ninety (90) days beginning with the first of the month after all normal procedures for taking adverse action have been taken if the individual is in an active food stamp case.]

(3) Good cause for leaving employment includes criteria in Section 6 of this administrative regulation and the following:

(a) Discrimination by the employer based on:

1. Age;

2. Race;

3. Sex;

4. Color;

5. Disability;

6. Religious beliefs;

7. National origin; or

8. Political beliefs;

(b) Work demands or conditions that render continued employment unreasonable, as in working without being paid on time;

(c) Acceptance of employment by the individual [head of household], or enrollment of at least half time in any recognized school, training program or institution of higher education, that requires the individual [head of household] to leave employment;

(d) Acceptance of employment by any other household member or enrollment at least half time in any recognized school, training program or institution of higher education in another county or similar political subdivision which requires the individual [head of household] to leave employment;

(e) Resignations of persons under age sixty (60) which are

recognized by the employer as retirement;

(f) Employment which becomes unsuitable by not meeting criteria in Section 8 after the acceptance of the employment;

(g) Acceptance of a bona fide offer of employment of more than twenty (20) hours a week or in which the weekly earnings are equivalent to the federal minimum wage multiplied by twenty (20) hours which, because of circumstances beyond the control of the household member [primary wage earner], subsequently either does not materialize or results in employment of less than twenty (20) hours a week or weekly earnings of less than the federal minimum wage multiplied by twenty (20) hours; and

(h) Leaving a job in connection with patterns of employment in which workers frequently move from one (1) employer to another as in migrant farm labor or construction work.

(4) Good cause for voluntary quit or reduction in work effort shall be verified if questionable.

Section 10. Curing Disqualification [Sanction] for Voluntary Quit or Reduction in Work Effort. (1) An individual [A household] may begin participation in the Food Stamp Program following the voluntary quit disqualification period, pursuant to Section 7(2) of this administrative regulation, if he [it] applies again and is determined eligible.

(2) Eligibility may be reestablished following the minimum period of disqualification imposed pursuant to Section 7(2) of this administrative regulation [during a disqualification period] and the household member shall, if otherwise eligible, be allowed to resume participation if he [the member who caused the disqualification]:

(a) Secures new employment which is comparable in salary or hours to the job which was quit; or

(b) Increases the number of work hours that he was working prior to the reduction in work effort that caused the imposition of the disqualification period.

(3) If an individual becomes exempt from work registration, the disqualification period imposed pursuant to Section 7(2) of this administrative regulation shall end and the individual shall be eligible to apply to participate in the Food Stamp Program. [Leaves the household.]

(3) A work registrant who:

(a) Is required to participate in the:

1. Food Stamp Employment and Training Program; or

2. Aid to Families with Dependent Children, Job Opportunities and Basic Skills Program as specified in 904 KAR 2:006 and 904 KAR 2:370; and

(b) If fails to participate shall be ineligible to receive food stamp benefits for two (2) months unless:

1. Good cause exists;

2. The noncompliant individual was participating in a Job Opportunities and Basic Skills Program component which is more stringent than the components of the Food Stamp Employment and Training Program; or

3. The noncompliant Job Opportunities and Basic Skills Program participant is otherwise exempt from work registration in the Food Stamp Employment and Training Program.

(c) An individual who is not sanctioned in the Food Stamp Program as meeting the criteria in paragraph (b)2 of this subsection shall be work registered in the Food Stamp Employment and Training Program unless otherwise exempt by subsection 2 of this section.]

Section 11. Hearing Process. Work registrants shall have the same opportunity to request a hearing pursuant to [as specified in] 904 KAR 3:070.

Section 12. Replacements for employment and training reimbursement checks that are lost or stolen shall be made by completing appropriate forms.

Section 13. The Community Service Program (CSP). (1) An

individual who participates in CSP shall be considered to have satisfied the work requirement pursuant to 904 KAR 3:025, Section 3(8), by:

(a) Establishing a work placement with a public or private nonprofit community service agency;

(b) Working, at a minimum, for the community service agency the required number of hours pursuant to subsections (2) or (3) of this section;

(c) Providing verification from the community service provider of:

1. The number of hours of community service that the individual intends to perform each month; and

2. At each subsequent recertification or change in household composition, the number of community service hours that the individual actually performed during the certification period.

(2) The number of hours of community service that an individual shall perform each month to satisfy the work requirement pursuant to 904 KAR 3:025, Section 3(8), shall be determined by comparing the monthly food stamp allotment to the Community Service Program table that is incorporated into this administrative regulation by reference.

(3) If the food stamp household's active members include more than one (1) individual who wants to satisfy the work requirement pursuant to 904 KAR 3:025, Section 3(8), through CSP, the monthly number of community service hours that each individual shall perform shall be determined by:

(a) Dividing the food stamp allotment by the number of individuals who are subject to the work requirement; and

(b) Comparing the individual pro rata share of the food stamp allotment to the Community Service Program table.

(4) Choosing to satisfy the work requirement pursuant to 904 KAR 3:025, Section 3(8), through CSP is:

(a) Voluntary; and

(b) Self-initiated.

Section 14. Material Incorporated by Reference. (1) Forms necessary for participation in the Food Stamp Employment and Training Program are being incorporated. These forms include:

(a) ET-101, revised 7/93;

(b) ET-102, revised 8/93;

(c) ET-102 Supplement A, revised 7/95 ~~[42/94]~~;

(d) J/ET-108, revised 7/95 ~~[9/94]~~;

(e) ET-111, revised 7/93;

(f) ET-112, revised 10/90;

(g) ET-114, revised 7/95 ~~[42/94]~~;

(h) ET-116, revised 7/95;

(i) The Community Service Program Table, issued 2/97;

(j) The Work Experience Program Table, issued 3/97. ~~[42/93.]~~

(2) Material incorporated by reference may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

JOHN L. CLAYTON, Commissioner

VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: June 11, 1997

FILED WITH LRC: June 13, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1997, at 9 a.m. at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by July 14, 1997, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made, in which case the person requesting the transcript shall be responsible for payment. If you do not wish to attend the public hearing, you may submit written comments on the

proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judy H. Trigg, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900, (502) 564-7573 (fax).

# REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: The affected entities are individuals who are between the ages of 16 and 60 and are not exempt from the work registration and work requirements or have quit a job or reduced their work effort without good cause, pursuant to 7 USC 2011 et seq. Further, 7 USC 2015(d), as amended by PL 104-193, section 815, mandates that the cabinet revise the criteria for imposing disqualification and the duration of sanction periods for noncompliance with the work requirements. The reduction of work effort to below thirty (30) hours per month and voluntary quit of a job shall be included as criteria for noncompliance with work requirements. Section 815 also requires the cabinet to impose the same disqualification for voluntary quit and reduction in the work effort as the disqualification for noncompliance with work registration or work program requirements under the Food Stamp Employment and Training Program. The penalty for noncompliance with the work requirements shall apply to individuals, rather than the entire household, for the act of noncompliance. As a conformity change, the definition of "primary wage earner" is deleted as it is no longer relevant to the sanctioning process. A public hearing was held on the Notice of Intent on April 30, 1997. Only written comments were submitted to the cabinet. The commenter requested that the department not disqualify an individual who participates in the Community Service Program and later decides to end his participation. Since these individuals will become ineligible unless they get a job working twenty (20) hours per week, the department is incorporating the request into the administrative regulation. The commenter also requested that individuals who become exempt from work registration not be required to cure a disqualification. The department agrees with the commenter and is incorporating the request into the administrative regulation. The administrative regulation incorporates the Work Experience Program (WEP). WEP is a type of workfare component of the Food Stamp Employment and Training Program. Participants can satisfy the work requirement pursuant to 904 KAR 3:025, Section 3(8) by performing a minimum number of work hours per month for a public or private nonprofit organization. WEP will be administered by the Department for Employment Services. The department anticipates that approximately 1,000 individuals will participate in the WEP component. The administrative regulation incorporates the Community Service Program (CSP). CSP has been approved by the Food and Consumer Service (FCS) as a type of workfare program. Participants can satisfy the work requirement pursuant to 904 KAR 3:025, Section 3(8) by performing a minimum number of community service hours per month.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: A public hearing was requested as a result of the publication of the Notice of Intent and written comments were received by the cabinet. However, no comments relating to the direct or indirect costs or savings were submitted.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: A public hearing was requested as a result of the publication of the Notice of Intent and written comments were received by the cabinet. However, no comments relating to the cost of doing business were submitted.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: This administrative regulation will not create any additional compliance, reporting or paperwork requirements.

2. Second and subsequent years: See item #1.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: 1997 - \$70,951. PL 104-193 increased the 100 percent money available to states to administer the ET program. Kentucky has received written correspondence that Kentucky's increased allocation for ET is \$70,951. These funds will be passed to DES, who administers the program for DSI. DSI will not incur any additional costs as a result of implementing WEP.

2. Continuing costs or savings: 1998 - Same as #1 provided that the 100 percent federal funding allocation for FFY 1998 remains the same as for the current program year. Adjustments increase or decrease the scope of the program will implemented based on the FFY 1998 funding allocation.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: No effect.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: 100 percent federal funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: A public hearing was requested as a result of the publication of the Notice of Intent and written comments were received by the cabinet. However, no comments relating to the economic impact of this administrative regulation were submitted.

(b) Kentucky: The same as item (6)(a).

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the cabinet is responsible to meet the federal requirements pursuant to 7 USC 2015(d), as amended by PL 104-193, section 815, except for the amendment to 7 USC 2015(d)(1)(B), which allows the cabinet the option of sanctioning the entire household, rather than the noncompliant individual. Sanctioning the entire household unfairly penalizes the remaining household members, including children, for the actions of a single person. Further, the sanctioning process pursuant to Section 815 is extremely complex for sanctioning the entire household. If the entire household is sanctioned, after the minimum disqualification period is served, the household may reestablish participation in the Food Stamp Program provided that the individual causing the sanction complies with the work requirement. If the individual still refuses to comply, the household remains ineligible for the remainder of six (6) months. If at the end of the six (6) month period the noncompliant individual refuses to cooperate with the work requirement, the remaining household members may participate, however, the noncompliant individual remains ineligible and his income and resources are counted toward the entire household. Therefore, to avoid penalizing children and spouses for the actions of an individual household member and to streamline and to simplify the sanctioning process, the cabinet is not exercising the option, thereby rejecting the alternative method of sanctioning the entire household. As a conformity change, the definition of "primary wage earner" is removed as it is no longer relevant to the sanctioning process.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The cabinet is required to administer the work program pursuant to 7 USC 2015(d) for the determination of eligibility for food stamp benefits. Individuals who comply with the work requirements have the opportunity

nity to receive assistance in finding employment and obtaining education and training. This administrative regulation is needed to comply with the federal mandates of PL 104-193, section 815. Also, individuals who are subject to the work requirement pursuant to 904 KAR 3:025E, Section 3(8), who cannot find a job can participate in the Food Stamp Program by complying with the requirements of the Work Experience Program (WEP), a component of the Food Stamp Employment and Training Program. Food stamp recipients who want to secure their own service provider may do so as a participant in the Community Service Program (CSP). By implementing these provisions, including WEP and CSP, program participants will benefit by a nutritious diet.

(b) State whether a harmful effect on environment and public health would result if not implemented: A detrimental effect on public health would result if this amendment is not implemented.

(c) If detrimental effect would result, explain detrimental effect: It is necessary to promulgate this administrative regulation to prevent the possible loss of federal funding (100 percent of food stamp benefits, 50 percent of federal match for administrative funds, and 100 percent of federal enhanced funding), due to the failure to implement the federal mandates of PL 104-193, section 815.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied since application of policy is applied in a like manner for all individuals as set forth through federal requirements.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 USC 2015(d) as amended by PL 104-193, section 815.

2. State compliance standards. This regulation pertains to Food Stamp Employment and Training Program requirements which are germane to the Food Stamp Program, as prescribed by 7 USC 2015(d), as amended. There are no separate state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. The provisions of this administrative regulation are promulgated in accordance with 7 USC 2015(d) et seq., as amended, and applied in a like manner on a statewide basis.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, JUNE 15, 1997

**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET**  
Department for Environmental Protection  
Division of Waste Management  
(New Administrative Regulation)

**401 KAR 46:005. Definitions related to 401 KAR Chapter 46.**

RELATES TO: KRS 224.01-010, 224.50-820 to 224.50-844,  
322.010, 322.040

STATUTORY AUTHORITY: KRS 224.10-100, 224.50-824

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 and the waste tire management provisions of KRS 224.50 require the cabinet to promulgate administrative regulations and implement a waste tire removal and control program. This chapter establishes provisions for the cabinet's waste tire removal and control program to prevent health and environmental hazards from waste tires. This administrative regulation defines essential terms used in this chapter. There are no federal statutes or administrative regulations governing the subject matter addressed in this administrative regulation.

Section 1. Definitions. (1) "Cabinet" shall have the meaning specified in KRS 224.01-010.

(2) "Closure" shall have the meaning specified in KRS 224.01-010.

(3) "Corrective action" means actions taken to correct the effect of a release on the environment as required by KRS 224.01-400.

(4) "Disposal" shall have the meaning specified in KRS 224.01-010.

(5) "End user" means the last person who reuses waste tires:

(a) In a civil engineering application;

(b) As a fuel for energy recovery; or

(c) To make any other finished product with economic value.

(6) "Engineer" shall have the meaning specified in KRS 322.010.

(7) "Ephemeral stream" means a stream that flows only in direct response to precipitation in the immediate watershed or in response to the melting of snow cover and ice and has a channel bottom that is always above the local water table.

(8) "Independent registered engineer" means an engineer registered in Kentucky pursuant to KRS 322.040 qualified to engage in waste management engineering practices.

(9) "Intermittent stream" means a stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year.

(10) "Karst feature" means a naturally occurring feature formed by the dissolution of carbonate rock including, but not limited to, a sinkhole, a swallow, a cave, a sinking stream, or a spring.

(11) "Key personnel" shall have the meaning specified in KRS 224.01-010.

(12) "Mobile waste tire container" means a portable device in which waste tires are accumulated. This includes a transport vehicle that is a container itself (for example, a trailer or a truck) and a container placed on or in a transport vehicle.

(13) "Open dump" shall have the meaning specified in KRS 224.01-010.

(14) "Operator" means a person responsible for overall operation of a waste tire facility.

(15) "Owner" means a person who owns an interest in a waste tire facility.

(16) "Passenger tire equivalent (PTE)" means a standard measurement of waste tires, used for reporting and for determining the amount of required financial assurance, and calculated in accordance with Section 4 of 401 KAR 46:040.

(17) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface run-off.

(18) "Person" shall have the meaning specified in KRS 224.01-010.

(19) "Principal executive officer" means:

(a) The chief executive officer of an agency;

(b) A senior executive officer having responsibility for the overall operation of a principal geographic unit of an agency; or

(c) The commanding officer of a military installation.

(20) "Processed waste tire material" means a material derived from waste tire processing.

(21) "Recovered material processing facility" shall have the meaning specified in KRS 224.01-010.

(22) "Recycling" shall have the meaning specified in KRS 244.01-010.

(23) "Recycling facility" means a waste tire facility engaged in the recycling of waste tires.

(24) "Residual landfill" means a facility for the disposal of only waste tires that is located, designed, constructed, operated, maintained, and closed, in conformance with 401 KAR 30:031 and 401 KAR Chapters 47 and 48, and that receives a case-by-case design review by the cabinet.

(25) "Responsible corporate officer" means:

(a) A president, secretary, treasurer, or vice-president of a corporation in charge of a principal business function, or a person who performs similar policy-making or decision-making functions for the corporation; or

(b) The manager of a manufacturing, production, or operating facility employing more than 250 persons or having gross annual sales or expenditures exceeding twenty five (25) million dollars.

(26) "Waste tire" means:

(a) A tire not used for its original, intended purpose due to wear, damage, or defect;

(b) A used tire stored for resale; or

(c) Processed waste tire material.

(27) "Waste tire accumulator" means a person with an accumulation of more than 100 waste tires unless that person is engaged in making retail sales of new motor vehicle tires and holds no more than 700 waste tires at any one (1) time for pickup. This includes, but is not limited to:

(a) A retailer;

(b) A transporter;

(c) A transporter who provides a retailer with a mobile waste tire container for the purpose of accumulating waste tires, is responsible for the waste tires accumulated in the container;

(d) A waste tire processor;

(e) A recycler;

(f) An end user;

(g) A property owner; and

(h) An auto salvage yard.

(28) "Waste tire facility" means a facility registered in accordance with 401 KAR 46:020, where waste tires are processed or more than 100 waste tires are accumulated.

(29) "Waste tire processing" means transporting waste tires or a method, system, or treatment designed to change the physical form, size, or chemical content of waste tires. Processing includes, but is not limited to, baling, chopping, recycling, or shredding.

(30) "Waste tire processor" means a person engaged in waste tire processing.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: June 12, 1997

FILED WITH LRC: June 13, 1997 at 10 a.m.

**PUBLIC HEARING:** A public hearing to receive comments on this proposed administrative regulation has been scheduled for Wednesday, July 30, 1997, at 2 p.m. eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by July 23, 1997. If a notification of intent to attend the hearing has not been received by that date, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by July 23, 1997 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the close of the public hearing on July 30, 1997. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Microsoft Word on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Microsoft Word or 3.5 inch diskettes not be available. The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodations for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by July 23, 1997.

**CONTACT PERSON:** James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, phone: (502) 564-2225, ext. 221, fax: (502) 564-4049.

#### REGULATORY IMPACT ANALYSIS

Contact Person: James Hale

1. Type and number of entities affected: This administrative regulation does not affect any entities, because it only defines terms used in this chapter and does not impose requirements. This administrative regulation is being promulgated to comply with KRS 13A.222.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: One commenter stated that if tire retailers are to be defined as accumulators and no alternative could be found, compliance costs may force tire retailers to stop offering to be a collection point for consumers' tires rather than to be subject to the regulatory requirements. In response to this concern, the cabinet has specifically excluded tire retailers who accumulate a limited number of waste tires for pickup from the definition of a waste tire accumulator proposed in 401 KAR 46:005. Therefore, there should be no effect on the cost of doing business for tire retailers as a result of this administrative regulation unless the tire retailer accumulates large numbers of waste tires.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were

received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The cabinet will experience no additional costs or savings by promulgating this administrative regulation. This administrative regulation defines terms used within this chapter.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: There will be no additional factors affecting costs.

b. Reporting and paperwork requirements: There will be no extra paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on the state and local revenue due to promulgation of this administrative regulation.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: No costs are imposed with the promulgation of this administrative regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: There were no other alternatives that would achieve compliance with KRS 13A.222.

8. Assessment of expected benefits of the administrative regulation: This administrative regulation will clearly define all terms used within this chapter.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: Not applicable since no requirements are imposed.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Not applicable.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or policies that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? The administrative regulations in this chapter are tiered based on type and quantity of waste tires accumulated or processed and the type of management activities performed by the owner or operator.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.50 requires the cabinet to adopt administrative regulations and to implement a waste tire removal and control program.

2. State compliance standards: There is no federal mandate for this administrative regulation. The proposed administrative regulation establishes definitions for terms used within 401 KAR Chapter 46. This regulation is necessary to provide consistency between state programs and comply with KRS 13A.222.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that accumulates or processes waste tires.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.50 requires the cabinet to adopt administrative regulations to implement a waste tire removal and control program. This administrative regulation establishes definitions for terms used within 401 KAR Chapter 46.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): Because this administrative regulation only establishes definitions for terms used within 401 KAR Chapter 46, expenditures will not be effected.

Other Explanation: None

#### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management (New Administrative Regulation)

#### 401 KAR 46:010. General provisions for waste tires.

RELATES TO: KRS 224.01-010, 224.10-210, 224.40-100, 224.50-820 to 224.50-844, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.50-824

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 and the waste tire management provisions of KRS 224.50 require the cabinet to promulgate administrative regulations and implement a waste tire removal and control program. This chapter establishes provisions for the cabinet's Waste Tire Removal and Control Program to prevent health and environmental hazards from waste tires. This administrative regulation establishes general provisions for waste tire accumulators and waste tire processors. There are no federal statutes or administrative regulations governing the subject matter addressed in this administrative regulation.

Section 1. Overview of the Waste Tire Program. The Waste Tire Program consists of the provisions of KRS 224.50-820 through 224.50-844 and the administrative regulations contained in the chapter.

(1) The Waste Tire Program applies to waste tire accumulators,

waste tire processors, persons making retail sales of new motor vehicle tires, and persons who request assistance from the waste tire trust fund.

(2) The Waste Tire Program does not apply to persons who use waste tires solely in agricultural practices.

(3) There are three (3) ways the Waste Tire Program is applied:

(a) A waste tire facility registration and operation program for waste tire accumulators and waste tire processors is described in 401 KAR 46:020, 46:030, and 46:040;

(b) A fee program for persons who make retail sales of new motor vehicle tires is described in 401 KAR 46:050; and

(c) A loan and grant program for persons who request financial assistance from the waste tire trust fund is described in 401 KAR 46:060 and 46:070.

Section 2. Variances from the Waste Tire Program. A waste tire accumulator or a waste tire processor may request a variance from a requirement in this chapter. The variance request shall be submitted in writing to the cabinet and shall be made in accordance with Section 2 of 401 KAR 30:020. The cabinet may grant or deny variance requests on a case-by-case basis in accordance with Section 2 of 401 KAR 30:020.

Section 3. Confidentiality of Information. (1) Information submitted to the cabinet pursuant to this chapter is open to public inspection unless a claim of confidentiality is made in accordance with KRS 224.10-210 and 400 KAR 1:060 and approved by the cabinet.

(2) A claim that the name or address of the owner or operator of a waste tire facility is confidential shall be denied.

Section 4. Waste Tire Transportation and Disposal. (1) Waste tires shall only be transported by facilities registered in accordance with this chapter or entities authorized by KRS Chapter 224.

(2) Waste tires shall only be transferred to facilities registered in accordance with this chapter or entities authorized by KRS Chapter 224.

Section 5. Waste Tire Piles as Illegal Open Dumps. A waste tire pile that is not registered in accordance with 401 KAR 46:020 shall be considered an illegal open dump and subject to the provisions of KRS 224.40-100.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: June 12, 1997

FILED WITH LRC: June 13, 1997 at 10 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Wednesday, July 30, 1997, at 2 p.m. eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by July 23, 1997. If a notification of intent to attend the hearing has not been received by that date, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by July 23, 1997 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the close of the public hearing on July 30, 1997. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Microsoft Word on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Microsoft Word or 3.5 inch diskettes not be available. The Natural Resources and Environ-

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mental Protection Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodations for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by July 23, 1997.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, phone: (502) 564-2225, ext. 221, fax: (502) 564-4049.

### REGULATORY IMPACT ANALYSIS

Contact Person: James Hale

1. Type and number of entities affected: This administrative regulation establishes general provisions for waste tire accumulators, waste tire processors, persons making retail sales of new motor vehicle tires, and persons who request assistance from the waste tire trust fund. Currently in Kentucky, there are no registered waste tire accumulators, 54 registered waste tire processors, and approximately 1,500 persons making sales of new motor vehicle tires in Kentucky. Any person may apply for a waste tire trust fund loan or waste tire trust fund grant when the cabinet determines that money can be made available. The cabinet estimates there may be as many as 300 abandoned or unregistered waste tire piles in Kentucky.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: One commenter stated that if tire retailers are to be defined as accumulators and no alternative could be found, compliance costs may force tire retailers to stop offering to be a collection point for consumers' tires rather than to be subject to the regulatory requirements. In response to this concern, the cabinet has specifically excluded tire retailers who accumulate a limited number of waste tires for pickup from the definition of a waste tire accumulator proposed in 401 KAR 46:005. Therefore, there should be no effect on the cost of doing business for tire retailers as a result of this administrative regulation unless the tire retailer accumulates large numbers of waste tires.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: One commenter indicated that he was not certain if the requirements for registration, operation, reporting, and financial assurance will be too daunting for those willing to engage in the waste tire business. The cabinet feels that these requirements are necessary to ensure proper management and disposal of waste tires. Waste tire accumulators and processors may experience a minimal increase in cost, if any, in order to meet registration requirements.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The cabinet will experience no additional costs or savings by promulgating this administrative regulation.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: There will be no additional factors affecting costs.

b. Reporting and paperwork requirements: There will be no extra

paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on the state and local revenue as a result of this administrative regulation.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: KRS 224.50-820 provides that the waste tire trust fund may be used to pay for the cost to administer the waste tire control program. Historically the waste tire trust fund has failed to generate adequate funds to operate the waste tire control program. Expenditures not covered by the waste tire trust fund will be covered by the general fund.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation is being promulgated to implement the goals of KRS 224.50-820 through 846 and is based on the authorities provided by that statute. In the absence of administrative regulations, the cabinet has not achieved the goals of the Waste Tire Control Program established in KRS 224.50-824. There are no other alternatives.

8. Assessment of expected benefits of the administrative regulation: This administrative regulation establishes general provisions for waste tire accumulators and waste tire processors. The expected benefit of this administrative regulation is to clarify who will be subject to the requirements of the Waste Tire Program.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: This administrative regulation will be implemented throughout the Commonwealth. This administrative regulation will improve public health and environmental welfare by eliminating environmental and public health threats caused by the unmanaged accumulation and processing of waste tires.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Without this administrative regulation, threats caused by the uncontrolled accumulation and processing of waste tires will continue to have a negative effect upon public health and the environment.

c. If detrimental effect would result, explain detrimental effect: Unmanaged waste tire accumulations and processing activities can result in threats to the environment and public safety due to hazards from fires, mosquitoes, and rodents. Aesthetic environmental value could also be diminished.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? This administrative regulation is tiered based on the type and quantity of waste tires accumulated or processed, as well as the type of management activities performed by the owner or operator.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air

pollution. KRS 224.50 requires the cabinet to adopt administrative regulations and implement a waste tire removal and control program.

2. State compliance standards: There is no federal mandate for this administrative regulation. This administrative regulation establishes general provisions for waste tire accumulators and waste tire processors.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that accumulates or processes waste tires.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.50 requires the cabinet to adopt administrative regulations to implement a waste tire removal and control program. This administrative regulation establishes general provisions for waste tire accumulators and waste tire processors.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation as specified in the Regulatory Impact Analysis. If this administrative regulations does not apply to a state, county, or local office of government, expenditures will not be affected.

Other Explanation: None

#### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management (New Administrative Regulation)

**401 KAR 46:020. Registration for waste tire accumulators and waste tire processors.**

RELATES TO: KRS 224.01-010, 224.40-305, 224.50-820 to 224.50-844, 322.010, 322.040

STATUTORY AUTHORITY: KRS 224.10-100, 224.50-824, 224.50-832

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 and the waste tire management provisions of KRS 224.50 require the cabinet to promulgate administrative regulations and implement a waste tire removal and control program. This chapter establishes

provisions for the cabinet's waste tire removal and control program to prevent health and environmental hazards from waste tires. This administrative regulation describes the registration program for waste tire facilities. There are no federal statutes or administrative regulations governing the subject matter addressed in this administrative regulation.

Section 1. Applicability. This administrative regulation applies to a waste tire accumulator, a waste tire processor, and a waste tire facility registered in accordance with 401 KAR Chapter 47. A waste tire processor, a waste tire accumulator, or a waste tire facility registered in accordance with 401 KAR Chapter 47 shall register as a waste tire facility in accordance with this administrative regulation. A waste tire accumulator, a waste tire processor, or a waste tire facility registered in accordance with 401 KAR Chapter 47 who fails to register in accordance with this administrative regulation shall be considered to own an unregistered tire pile, which is an illegal open dump subject to the provisions of KRS 224.40-100.

Section 2. Initial Registration of a Waste Tire Accumulator or Waste Tire Processor. (1) A person who intends to become a waste tire accumulator or waste tire processor shall submit a completed Waste Tire Facility Registration Form to the cabinet in accordance with Section 5 of this administrative regulation and shall post financial assurance in accordance with 401 KAR 46:040. The waste tire accumulator or waste tire processor shall not accumulate or process waste tires until the registration and financial assurance have been approved in writing by the cabinet.

(2) A waste tire accumulator or waste tire processor who has not registered with the cabinet prior to the effective date of this administrative regulation shall submit a completed Waste Tire Facility Registration Form to the cabinet in accordance with Section 5 of this administrative regulation and post financial assurance in accordance with 401 KAR 46:040. The waste tire accumulator or waste tire processor shall not accumulate additional waste tires or process waste tires until the registration and financial assurance have been approved in writing by the cabinet.

Section 3. Registration of Existing Waste Tire Facilities. A waste tire facility registered with the cabinet prior to the effective date of this administrative regulation in accordance with 401 KAR Chapter 47 shall, within forty-five (45) days of the effective date of this administrative regulation:

(1)(a) Submit a completed Waste Tire Facility Registration Form to the cabinet, in accordance with Section 5 of this administrative regulation;

(b) Submit a plan with a time schedule for bringing the facility into compliance with Section 2 of 401 KAR 46:030; and

(c) Post financial assurance in accordance with 401 KAR 46:040; or

(2) Conduct and complete closure activities in accordance with Section 3 of 401 KAR 46:030.

Section 4. Modification of a Registration. (1) The owner of a waste tire facility registered in accordance with Section 2 or 3 of this administrative regulation shall submit a revised registration form and the required financial assurance to the cabinet prior to:

(a) Accepting waste tires from an additional county not specified in the registration form;

(b) Changing a method for the accumulation, processing, or disposal of waste tires; or

(c) Changing an owner or operator of the waste tire facility.

(2) The owner shall not implement the changes listed in subsection (1) of this section until the modification has been approved in writing by the cabinet.

Section 5. General Contents of the Registration Form. The

registration shall be submitted on DEP Form 7101A, incorporated by reference in Section 7 of this administrative regulation. The registration form shall be signed and certified, and shall contain the following categories of information requested in the form:

- (1) Facility owner information;
- (2) Property owner information;
- (3) Facility information, including:
  - (a) Facility contacts, location, capacity, and design;
  - (b) Source and destination information for all waste tires; and
  - (c) A description of how water and mosquitoes will be prevented in the waste tires; and
- (4) Any additional information requested by the cabinet.

Section 6. Signatures for Registrations and Modifications. (1) The initial registration form and the revised registration form for a modification shall be signed as follows:

- (a) For a corporation, by a responsible corporate officer;
- (b) For a partnership or a sole proprietorship, by a general partner or by the proprietor, respectively; or
- (c) For a municipality or a state, federal, or other public agency, by either a principal executive officer or a ranking elected official.

(2) The initial registration form and the revised registration form for a modification shall be signed by a person described in subsection (1) of this section, or by a duly authorized representative of that person. A person shall be a duly authorized representative only if:

- (a) The authorization is made in writing by a person described in subsection (1) of this section;
- (b) The authorization either identifies a person by name or specifies an unnamed person with responsibility for the overall operation of the regulated facility or activity, such as the plant manager, superintendent, or a person with a position of equivalent responsibility (a duly authorized representative may thus be either a named person or a person occupying a named position); and
- (c) The written authorization is submitted to the cabinet.

(3) If an authorization under subsection (2) of this section is no longer accurate, a new authorization satisfying the requirements of subsection (2) of this section shall be submitted to the cabinet prior to or with a report, information, or an application to be signed by an authorized representative.

(4) A person signing a document under subsection (1) or (2) of this section has a duty to provide accurate information and shall make the following notarized certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment for such violations."

Section 7. Incorporation by Reference. (1) The following document is hereby incorporated by reference: "Waste Tire Facility Registration Form", DEP Form 7101A (February 1997).

(2) The document referenced in subsection (1) of this section is available for inspection and copying at the Solid Waste Branch of the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, from 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, excluding state holidays.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: June 12, 1997

FILED WITH LRC: June 13, 1997 at 10 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Wednesday, July 30, 1997, at 2 p.m. eastern time in the auditorium of the

Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by July 23, 1997. If a notification of intent to attend the hearing has not been received by that date, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by July 23, 1997 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the close of the public hearing on July 30, 1997. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Microsoft Word on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Microsoft Word or 3.5 inch diskettes not be available. The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodations for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by July 23, 1997.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, phone: (502) 564-2225, ext. 221, fax: (502) 564-4049.

## REGULATORY IMPACT ANALYSIS

Contact Person: James Hale

1. Type and number of entities affected: This administrative regulation applies to waste tire accumulators and waste tire processors and describes the registration program for waste tire facilities. All waste tire processors and waste tire accumulators shall register with the cabinet. Currently in Kentucky, there are no registered waste tire accumulators and 54 registered waste tire processors. The cabinet estimates that there may be as many as 300 abandoned or unregistered waste tire piles in Kentucky. This administrative regulation will affect those waste tire accumulators and processors already registered with the state, as well as any person wishing to become a waste tire accumulator or processor.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: One commenter stated that requirements for retailers should be reasonable and reflect the difference between those businesses that accumulate an incidental number of waste tires as a by-product of their primary business and businesses for whom the accumulation of waste tires is the functional intent. The commenter stated that if retailers are to be defined as accumulators, they may be forced to stop offering to be a collection point for consumers' waste tires rather than to be subject to regulatory requirements. In response to this concern, the cabinet has specifically excluded tire retailers who hold a limited number of waste tires for pickup from the definition of a waste tire accumulator in 401 KAR 46:005. Therefore, tire retailers who operate within this limitation can continue to accept consumers' waste tires as a by-product of their primary business and will not be subject to these regulatory requirements. There should be no effect on the cost of living and employment as a result of this administrative regulation.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the

extent available from the public comments received: One commenter stated that if tire retailers are to be defined as accumulators and no alternative could be found, compliance costs may force tire retailers to stop offering to be a collection point for consumer's tires rather than to be subject to the regulatory requirements. In response to this concern, the cabinet has specifically excluded tire retailers who accumulate a limited number of waste tires for pickup from the definition of a waste tire accumulator. Therefore, there should be no effect on the cost of doing business for tire retailers as a result of this administrative regulation unless the tire retailer accumulates large numbers of waste tires.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: One commenter indicated that he was not certain if the requirements for registration, operation, reporting, and financial assurance will be too daunting for those willing to engage in the waste tire business. These requirements are consistent with the statutory provisions of KRS 224.50-832. The cabinet feels that these requirements are necessary to ensure proper management and disposal of waste tires. Waste tire accumulators and processors may experience a minimal increase in cost, if any, in order to meet registration requirements.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The cabinet will have an initial increased workload to register all waste tire accumulators and waste tire processors.

2. Continuing costs or savings: The cabinet will continue to register waste tire accumulators and waste tire processors as they become established; however, there will be no significant continuing costs or savings as a result of this administrative regulation.

3. Additional factors increasing or decreasing costs: There will be no additional factors affecting costs.

b. Reporting and paperwork requirements: The cabinet will have an initial increase in paperwork requirements in order to register all waste tire accumulators and waste tire processors and notify and re-register those waste tire accumulators and processors currently registered.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenue due to this administrative regulation. There are no fees associated with registration.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: KRS 224.50-820 provides that the waste tire trust fund may be used to pay for the cost to administer the waste tire control program. Historically the waste tire trust fund has failed to generate adequate funds to operate the waste tire control program. Expenditures not covered by the waste tire trust fund will be covered by the general fund.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: KRS 224.50-832(1) states "the cabinet shall require the registration with the cabinet of every accumulation of more than one hundred (100) waste tires". This administrative regulation is being promulgated to implement this statutory provision and meet the goals of KRS 224.50-820 to 224.50-844. This administrative regulation is based on the authorities provided by that statute. In the absence of administrative regulations, the cabinet has not achieved the goals of the Waste Tire Control Program established in KRS 224.50-824.

There are no other alternatives.

8. Assessment of expected benefits of the administrative regulation: This administrative regulation applies to waste tire accumulators and waste tire processors and describes the registration program for waste tire facilities. The expected benefit of this administrative regulation is to provide consistent standards and requirements for registration of waste tire accumulators and processors.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: This administrative regulation will be implemented throughout the Commonwealth. This administrative regulation will improve public health and environmental welfare by providing consistent standards and requirements for registration of waste tire accumulators and processors to help eliminate environmental and public health threats caused by the unmanaged accumulation and processing of waste tires.

b. State whether a detrimental effect on the environment and public health would result if not implemented: This administrative regulation will provide consistent standards and requirements for registration of waste tire accumulators and processors and help minimize threats upon public health and the environment caused by the uncontrolled accumulation and processing of waste tires.

c. If detrimental effect would result, explain detrimental effect: Unmanaged waste tire accumulations and processing activities can result in threats to the environment and public safety due to hazards from fires, mosquitoes, and rodents. Aesthetic environmental value could also be diminished.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or policies that conflict, overlap, or duplicate this administrative regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? This administrative regulation is tiered based on new registration and prior registration with the cabinet, registration of the type and quantity of waste tires accumulated or processed, and the type of management activities performed.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.50 requires the cabinet to adopt administrative regulations and implement a waste tire removal and control program.

2. State compliance standards: There is no federal mandate for this administrative regulation. This administrative regulation establishes the registration program for waste tire facilities.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

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2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that accumulates or processes waste tires.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.50 requires the cabinet to adopt administrative regulations to implement a waste tire removal and control program. This administrative regulation establishes the registration program for waste tire facilities.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation as specified in the Regulatory Impact Analysis. If this administrative regulations does not apply to a state, county, or local office of government, expenditures will not be affected.

Other Explanation: None

### **NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management (New Administrative Regulation)**

#### **401 KAR 46:030. Operating requirements for waste tire facilities.**

RELATES TO: KRS 224.01-010, 224.50-820 to 224.50-844

STATUTORY AUTHORITY: KRS 224.10-100, 224.50-824, 224.50-832

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 and the waste tire management provisions of KRS 224.50 require the cabinet to promulgate administrative regulations and implement a waste tire removal and control program. This chapter establishes provisions for the cabinet's Waste Tire Removal and Control Program to prevent health and environmental hazards from waste tires. This administrative regulation establishes operating requirements for waste tire facilities. There are no federal statutes or administrative regulations governing the subject matter addressed in this administrative regulation.

Section 1. Applicability. This administrative regulation applies to the owner and the operator of a waste tire facility.

Section 2. Operation. (1) The owner or the operator of a waste tire facility shall operate the facility in accordance with the requirements of KRS Chapter 224, 401 KAR 30:031, this chapter, and the following:

(a) Waste tires shall be accumulated, processed, or disposed only as specified in the approved registration form;

(b) Waste tires shall be stored in a manner to prevent mosquitoes and the entrapment of water;

(c) Waste tires shall be stored in windrows no greater than twenty-five (25) feet wide, ten (10) feet high, and seventy-five (75) feet long, with at least fifty (50) feet of open, unoccupied ground surrounding each windrow;

(d) Waste tires shall be stored in a manner to allow fire fighting

equipment to enter the property and to access the waste tires;

(e) Waste tires shall be stored on a surface with a grade of five (5) percent or less and free of trees, shrubs, weeds, grass, or other flammable materials.

(f) Waste tires shall not be stored within 250 feet of any karst feature, surface water, ephemeral stream, intermittent stream, or perennial stream.

(g) Waste tires shall not be stored within thirty (30) feet of any utility easement, property line, or state or county right-of-way.

(h) Waste tires shall not be stored within 250 feet of a residence.

(i) Waste tires shall be stored only in the storage areas specified in the approved registration form.

(j) A permanent sign that is readable at 100 feet shall be posted at all entrances of the facility and shall display: the facility name, the registration number, the facility phone number, the name of the owner, the name and phone number of the primary contact person, the cabinet's twenty-four (24) hour environmental response telephone number, and the operating hours of the facility. The same information shall be posted on the side or rear of all mobile waste tire containers.

(2) The requirements of paragraphs (f) through (i) do not apply to mobile waste tire containers.

(3) The owner or the operator of a waste tire facility shall keep records of the sources and types of waste tires received, the number of PTEs processed and accumulated, and the destination of the waste tires. Records shall be maintained at the facility for a minimum of three (3) years and be available for cabinet inspection. This information shall be submitted to the cabinet quarterly on the Waste Tire Facility Quarterly Report Form, DEP Form 7101B, incorporated by reference in Section 4 of this administrative regulation. The quarterly report shall be submitted by April 15, July 15, October 15, and January 15.

Section 3. Closure. (1) At least thirty (30) days prior to beginning closure, the owner of a waste tire facility shall submit a proposed closure schedule to the cabinet that includes the date the waste tire facility will cease accepting waste tires.

(2) When the waste tire facility ceases to accept waste tires, the owner or operator of the waste tire facility shall conduct closure by:

(a) Removing all waste tires from the facility; and

(b) Performing corrective action required by KRS 224.01-400.

(3) When closure is completed, the owner of the waste tire facility shall submit to the cabinet documentation demonstrating successful completion of closure accompanied by the following notarized certification: "I certify that closure is complete in accordance with KRS Chapter 224 and 401 KAR Chapter 46."

(4) After the cabinet inspects the facility and determines that closure is complete, the cabinet shall provide written notification to the owner of the waste tire facility that the owner is released from the financial assurance requirements of 401 KAR 46:040, and that the registration has been terminated.

Section 4. Incorporation by Reference. (1) The following document is hereby incorporated by reference: "Waste Tire Facility Quarterly Report Form", DEP Form 7101B (February 1997).

(2) The document referenced in subsection (1) of this section is available for inspection and copying at the Solid Waste Branch of the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, from 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, excluding state holidays.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: June 12, 1997

FILED WITH LRC: June 13, 1997 at 10 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Wednesday, July 30, 1997, at 2 p.m. eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in

being heard at this hearing must notify James Hale in writing, at the address noted below, by July 23, 1997. If a notification of intent to attend the hearing has not been received by that date, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by July 23, 1997 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the close of the public hearing on July 30, 1997. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Microsoft Word on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Microsoft Word or 3.5 inch diskettes not be available. The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodations for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by July 23, 1997.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, phone: (502) 564-2225, ext. 221, fax: (502) 564-4049.

#### REGULATORY IMPACT ANALYSIS

Contact Person: James Hale

1. Type and number of entities affected: This administrative regulation applies to waste tire accumulators and processors. Waste tire accumulators and waste tire processors must register with the cabinet, and upon registration, they will be classified as a waste tire facility. This administrative regulation establishes operating requirements for waste tire facilities. Currently in Kentucky, there are no registered waste tire accumulators and 54 registered waste tire processors. The cabinet estimates that there may be as many as 300 abandoned or unregistered waste tire piles in Kentucky. This administrative regulation will affect those waste tire accumulators and processors already registered with the state, as well as any person who becomes the owner or operator of a waste tire facility.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: One commenter stated that requirements for retailers should be reasonable and reflect the difference between those businesses that accumulate an incidental number of waste tires as a by-product of their primary business and businesses for whom the accumulation of waste tires is the functional intent. The commenter stated that if retailers are to be defined as accumulators, they may be forced to stop offering to be a collection point for consumers' waste tires rather than to be subject to regulatory requirements. In response to this concern, the cabinet has specifically excluded tire retailers who hold a limited number of waste tires for pickup from the definition of a waste tire accumulator in 401 KAR 46:005. Therefore, tire retailers who operate within this limitation can continue to accept consumers' waste tires as a by-product of their primary business and will not be subject to these regulatory requirements. There should be no effect on the cost of living and employment as a result of this administrative regulation.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the

extent available from the public comments received: One commenter indicated that he was not certain if the requirements for registration, operation, reporting, and financial assurance will be too daunting for those willing to engage in the waste tire business. The cabinet notes that these requirements are consistent with the statutory provisions of KRS 224.50-832. The cabinet feels that these requirements are necessary to ensure proper management and disposal of waste tires. Waste tire facilities may experience a minimal increase in operating cost in order to meet the operating requirements established by this administrative regulation. One commenter stated that if tire retailers are to be defined as accumulators and no alternative could be found, compliance costs may force tire retailers to stop offering to be a collection point for consumers' tires rather than to be subject to the regulatory requirements. In response to this concern, the cabinet has specifically excluded tire retailers who hold a limited number of waste tires for pickup from the definition of a waste tire accumulator. Therefore, there should be no effect on the cost of doing business for tire retailers as a result of this administrative regulation unless the tire retailer accumulates large numbers of waste tires.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: One commenter indicated that he was not certain if the requirements for registration, operation, reporting, and financial assurance will be too daunting for those willing to engage in the waste tire business. The cabinet notes that these requirements are consistent with the statutory provisions of KRS 224.50-832. The cabinet feels that these requirements are necessary to ensure proper management and disposal of waste tires. Waste tire facilities may experience a minimal increase in operating cost in order to meet the operating requirements established by this administrative regulation.

2. Second and subsequent years: No public comments were received. Costs should not be effected after the first year.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The cabinet should not experience any additional costs or savings due related to promulgation of this administrative regulation.

2. Continuing costs or savings: The cabinet should not experience any additional continuing costs or savings due related to promulgation of this administrative regulation.

3. Additional factors increasing or decreasing costs: There will be no additional factors affecting costs.

b. Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements as a result of this administrative regulation.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenue due to this regulation.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: KRS 224.50-820 provides that the waste tire trust fund may be used to pay for the cost to administer the waste tire control program. Historically the waste tire trust fund has failed to generate adequate funds to operate the waste tire control program. Expenditures not covered by the waste tire trust fund will be covered by the general fund.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: KRS 224.50-832(2) states "the cabinet shall establish standards for controlling the accumulations of more than 100 waste

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tires in order to prevent the health and environmental hazardous resulting from waste tire piles." This administrative regulation is being promulgated to implement this statutory provision and meet the goals of KRS 224.50-820 to 224.50-846. This administrative regulation is based on the authorities provided by that statute. In the absence of administrative regulations, the cabinet has not achieved the goals of the Waste Tire Control Program established in KRS 224.50-824. There are no other alternatives.

8. Assessment of expected benefits of the administrative regulation: This administrative regulation establishes operating requirements for waste tire facilities. The expected benefit of this administrative regulation is to provide consistent operating standards and requirements for waste tire facilities in order to protect human health, safety and the environment.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: This administrative regulation will be implemented throughout the Commonwealth. This administrative regulation will improve public health and environmental welfare by providing consistent operating standards and requirements for waste tire facilities in an effort to eliminate environmental and public health threats caused by the unmanaged accumulation and processing of waste tires.

b. State whether a detrimental effect on the environment and public health would result if not implemented: This administrative regulation will improve public health and environmental welfare by providing consistent operating standards and requirements for waste tire facilities and help minimize threats upon public health and the environment caused by the uncontrolled accumulation and processing of waste tires. A detrimental effect could result without this administrative regulation.

c. If detrimental effect would result, explain detrimental effect: Unmanaged waste tire accumulations and processing activities can result in threats to the environment and public safety due to hazards from fires, mosquitoes, and rodents. Aesthetic environmental value could also be diminished.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? This administrative regulation is tiered based on the type and quantity of waste tires accumulated or processed, as well as the type of management activities performed.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.50 requires the cabinet to adopt administrative regulations and implement a waste tire removal and control program.

2. State compliance standards: There is no federal mandate for this administrative regulation. This administrative regulation establishes operating requirements for waste tire facilities.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that accumulates or processes waste tires.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.50 requires the cabinet to adopt administrative regulations to implement a waste tire removal and control program. This administrative regulation establishes operating requirements for waste tire facilities.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation as specified in the Regulatory Impact Analysis. If this administrative regulations does not apply to a state, county, or local office of government, expenditures will not be affected.

Other Explanation: None

### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management (New Administrative Regulation)

#### 401 KAR 46:040. Financial assurance.

RELATES TO: KRS 224.01-010, 224.10-420, 224.50-820 to 224.50-844

STATUTORY AUTHORITY: KRS 224.10-100, 224.50-824, 224.50-829

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 and the waste tire management provisions of KRS 224.50 require the cabinet to promulgate administrative regulations and implement a waste tire removal and control program. This chapter establishes provisions for the cabinet's Waste Tire Removal and Control Program to prevent health and environmental hazards from waste tires. This administrative regulation establishes financial assurance requirements for waste tire accumulators and waste tire processors. There are no federal statutes or administrative regulations governing the subject matter addressed in this administrative regulation.

Section 1. Applicability. This administrative regulation applies to a waste tire accumulator and a waste tire processor. A waste tire processor or a waste tire accumulator shall register as a waste tire facility in accordance with 401 KAR 46:020, and shall post financial assurance in accordance with this administrative regulation.

Section 2. Posting Financial Assurance. (1) The owner of a waste tire facility shall post financial assurance for closure by executing a

Performance Bond for Waste Tire Facilities (DEP Form 7101D) in combination with one (1) or more financial mechanisms identified in Section 5 of this administrative regulation. The Performance Bond for Waste Tire Facilities and the financial mechanisms are incorporated by reference in Section 7 of this administrative regulation.

(2) A municipality or a state, federal, or other public agency that owns a waste tire facility shall allocate finances for closure consistent with the amount of financial assurance prescribed by Section 3 of this administrative regulation instead of submitting the documents identified in subsection (1) of this section. A copy of the current fiscal year budget shall be submitted to the cabinet by September 1 of each year.

Section 3. Financial Assurance for Closure. (1) A waste tire accumulator or a waste tire processor shall post financial assurance for closure using the mechanisms identified in Section 5 of this administrative regulation as part of the registration required by 401 KAR 46:020.

(2) The amount of financial assurance shall be calculated as follows:

(a) A waste tire accumulator or a waste tire processor shall post financial assurance in the amount of \$10,000.

(b) A waste tire accumulator or waste tire processor who accumulates more than 10,000 waste tires shall post additional financial assurance in the amount specified in Table 1 for the maximum number of passenger tire equivalents (PTEs) allowed by the registration to be accumulated at one (1) time. PTEs shall be calculated using the methods identified in Section 4 of this administrative regulation.

Table 1 - Financial Assurance

| Number of PTEs             | Required Financial Assurance |
|----------------------------|------------------------------|
| 10,001 to 50,000 PTEs      | \$50,000                     |
| 50,001 to 100,000 PTEs     | \$100,000                    |
| 100,001 to 500,000 PTEs    | \$500,000                    |
| 500,001 to 1,000,000* PTEs | \$1,000,000                  |

\* Financial assurance shall be posted at the rate of one (1) dollar per PTE and posted in \$50,000 increments for any accumulations of over 1,000,000 PTEs.

(3) The owner of a waste tire facility shall provide continuous coverage until released from the financial assurance requirements by the cabinet.

Section 4. PTE Calculation. PTEs shall be calculated by using one (1) of the following methods:

(1) Count, using the number of whole waste tires where:

(a) A whole waste tire with an inside bead diameter less than or equal to nineteen (19) inches is equal to one (1) PTE; and

(b) A whole waste tire with an inside bead diameter greater than nineteen (19) inches is equal to five (5) PTEs;

(2) Weight, where twenty (20) pounds of a waste tire is equal to one (1) PTE, calculated using the following formula:

Pounds of waste tire ÷ twenty (20) pounds = The number of PTEs

(baled waste tires shall be weighed to determine the number of PTEs);

(3) Volume, where:

(a) One (1) cubic yard of loose, whole waste tires is equal to ten (10) PTEs;

(b) One (1) cubic yard of laced or stacked whole waste tires is equal to fifteen (15) PTEs; and

(c) One (1) cubic yard of processed waste tire material is equal to fifty (50) PTEs; or

(4) Another method approved by the cabinet that ensures that adequate funds are available to meet the costs of closure.

Section 5. Financial Assurance Mechanisms. (1) A mechanism used to demonstrate financial assurance in accordance with this administrative regulation shall be issued in favor of the cabinet and shall ensure that adequate funds are available to meet the costs of closure. The mechanisms that may be used to demonstrate financial assurance, which are incorporated by reference in Section 7 of this administrative regulation, are:

(a) Surety Bond for Waste Tire Facilities (DEP Form 7101E);

(b) Irrevocable Letter of Credit for Waste Tire Facilities (DEP Form 7101F);

(c) Escrow Agreement for Waste Tire Facilities (DEP Form 7101G);

(d) Trust Fund Agreement for Waste Tire Facilities (DEP Form 7101H);

(e) Certificate of Insurance for Waste Tire Facilities (DEP Form 7101I); and

(f) Financial Test and Corporate Guarantee for Waste Tire Facilities (DEP Form 7101J).

(2) A financial assurance mechanism shall guarantee the availability of the required amount of coverage until the owner of the waste tire facility establishes an alternative financial assurance mechanism or is released from the financial assurance requirements of this chapter. The amount of financial assurance obtained from a single financial institution shall not exceed the limit of federal insurance.

Section 6. Forfeiture of Financial Assurance. (1) The cabinet may forfeit a performance bond and accompanying financial assurance mechanism if the cabinet determines that the owner or operator of the waste tire facility has violated the terms of the registration, the terms of the closure plan, the provisions of KRS Chapter 224, the environmental performance standards of 401 KAR 30:031, or a requirement of this chapter.

(2) To forfeit the performance bond and accompanying financial assurance mechanisms, the cabinet may:

(a) Initiate an administrative hearing as provided by KRS 224.10-420(1) and 401 KAR 100:010; or

(b) Make a final determination as provided by KRS 224.10-420(2) and 401 KAR 100:010. The cabinet shall send the final determination by certified mail, return receipt requested, to the owner of the waste tire facility and to the entity that posted the financial assurance mechanism, stating the cabinet's determination to forfeit the financial assurance, identifying the reason for the forfeiture, and informing the owner of the waste tire facility of the right to request a hearing on the final determination as provided in KRS 224.10-420(2) and 401 KAR 100:010. If a petition for review of the final determination is not filed in accordance with KRS 224.10-420(2) and 401 KAR 100:010, the cabinet may enter a final order of forfeiture and collect the financial assurance.

(3) Financial assurance forfeited pursuant to subsection (2) of this section shall be placed in the waste tire trust fund established by KRS 224.50-820. The cabinet shall, to the extent practical, use the forfeited financial assurance to perform closure or conduct corrective action at the waste tire facility covered by the forfeited financial assurance. Financial assurance remaining after completion of closure or corrective action shall remain in the waste tire trust fund and may be used by the cabinet for any other purpose authorized by KRS 224.50-820.

(4) If the forfeited financial assurance is insufficient to pay for the full cost of closure or corrective action, the owner of the waste tire facility shall remain liable for the remaining cost.

Section 7. Incorporation by Reference. (1) The following documents are hereby incorporated by reference:

- (a) "Performance Bond for Waste Tire Facilities", DEP Form 7101D (February 1997);
- (b) "Surety Bond for Waste Tire Facilities", DEP Form 7101E (February 1997);
- (c) "Irrevocable Letter of Credit for Waste Tire Facilities", DEP Form 7101F (February 1997);
- (d) "Escrow Agreement for Waste Tire Facilities", DEP Form 7101G (February 1997);
- (e) "Trust Fund Agreement for Waste Tire Facilities", DEP Form 7101H (February 1997);
- (f) "Certificate of Insurance for Waste Tire Facilities", DEP Form 7101I (February 1997); and
- (g) "Financial Test and Corporate Guarantee for Waste Tire Facilities", DEP Form 7101J (February 1997).

(2) The documents referenced in subsection (1) of this section are available for inspection and copying at the Solid Waste Branch of the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, from 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, excluding state holidays.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: June 12, 1997

FILED WITH LRC: June 13, 1997 at 10 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Wednesday, July 30, 1997, at 2 p.m. eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by July 23, 1997. If a notification of intent to attend the hearing has not been received by that date, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by July 23, 1997 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the close of the public hearing on July 30, 1997. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Microsoft Word on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Microsoft Word or 3.5 inch diskettes not be available. The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodations for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by July 23, 1997.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, phone: (502) 564-2225, ext. 221, fax: (502) 564-4049.

#### REGULATORY IMPACT ANALYSIS

Contact Person: James Hale

1. Type and number of entities affected: This administrative regulation applies to a waste tire accumulator and a waste tire processor by establishing financial assurance requirements. Currently in Kentucky, there are no registered waste tire accumulators and 54 registered waste tire processors. The cabinet estimates that there may be as many as 300 abandoned or unregistered waste tire piles

in Kentucky. This administrative regulation will affect those waste tire accumulators and processors already registered with the state, as well as any person wishing to become a waste tire accumulator or processor.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: One commenter stated that requirements for retailers should be reasonable and reflect the difference between those businesses that accumulate an incidental number of waste tires as a by-product of their primary business and businesses for whom the accumulation of waste tires is the functional intent. The commenter stated that if retailers are to be defined as accumulators, they may be forced to stop offering to be a collection point for consumers' waste tires rather than to be subject to regulatory requirements. In response to this concern, the cabinet has specifically excluded tire retailers who hold a limited number of waste tires for pickup from the definition of a waste tire accumulator in 401 KAR 46:005. Therefore, tire retailers who operate within this limitation can continue to accept consumers' waste tires as a by-product of their primary business and not subject to these regulatory requirements. There should be no effect on the cost of living and employment as a result of this administrative regulation.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: One commenter indicated that he was not certain if the requirements for registration, operation, reporting, and financial assurance will be too daunting for those willing to engage in the waste tire business. The cabinet notes that these requirements are consistent with the statutory provisions of KRS 224.50-832. The cabinet feels that these requirements are necessary to ensure proper management and disposal of waste tires. There will be a direct increase in the cost of doing business for waste tire accumulators and processors, as they will be required to post financial assurance to pay for damages resulting from the waste tires or abandonment of the waste tires. One commenter stated that if tire retailers are to be defined as accumulators and no alternative could be found, compliance costs may force tire retailers to stop offering to be a collection point for consumer's tires rather than to be subject to the regulatory requirements. In response to this concern, the cabinet has specifically excluded tire retailers who hold a limited number of waste tires for pickup from the definition of a waste tire accumulator. Therefore, there should be no effect on the cost of doing business for tire retailers as a result of this administrative regulation unless the tire retailer accumulates large numbers of waste tires.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: One commenter indicated that he was not certain if the requirements for registration, operation, reporting, and financial assurance will be too daunting for those willing to engage in the waste tire business. The cabinet notes that these requirements are consistent with the statutory provisions of KRS 224.50-832. The cabinet feels that these requirements are necessary to ensure proper management and disposal of waste tires. There will be a direct increase in the cost of doing business for waste tire accumulators and processors, as they will be required to post financial assurance to pay for damages resulting from the waste tires or abandonment of the waste tires.

2. Second and subsequent years: No public comments were received. Costs will not be effected after the first year, unless additional financial assurance is required to cover damages resulting from the waste tires or there is an increase in the number of waste tires being accumulated.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: In 1996 the cabinet spent over \$1,500,000 to cleanup abandoned waste tire piles. The financial assurance requirements established by this administrative regulation ensure that funds are available to pay for damages resulting from waste tires or abandonment of the waste tires at registered waste tire facilities. These savings will allow the cabinet to focus remediation of unregistered waste tire piles. The cabinet will experience an initial increased workload to verify financial assurance mechanisms for waste tire facilities.

2. Continuing costs or savings: There will be no significant continuing costs to the cabinet as a result of this administrative regulation; however, the savings indicated above should continue.

3. Additional factors increasing or decreasing costs: The money saved as indicated above should result in an increase of funds available in the waste tire trust fund. This will allow the cabinet to pursue state initiated cleanup of unregistered waste tire piles, develop markets for end use of waste tires, and issue loans and grants for waste tire projects.

b. Reporting and paperwork requirements: The cabinet will have an initial increase in paperwork requirements due to the financial assurance requirements established by this administrative regulation.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenue due to this administrative regulation.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: KRS 224.50-820 provides that the waste tire trust fund may be used to pay for the cost to administer the waste tire control program. Historically the waste tire trust fund has failed to generate adequate funds to operate the Waste Tire Control Program. Expenditures not covered by the waste tire trust fund will be covered by the general fund.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: KRS 224.50-832(2) requires financial security for accumulations of more than 100 waste tires to pay for damages resulting from fires or abandonment of the tires. KRS 224.50-829 states "the cabinet shall require waste tire processors and recyclers to provide financial assurances that guarantee the removal, processing, and disposal of all waste tires upon closing the facility" and "the cabinet shall promulgate administrative regulations to implement this section." This administrative regulation is being promulgated to implement these statutory provisions and meet the goals of KRS 224.50-820 to 224.50-846. This administrative regulation is based on the authorities provided by that statute. In the absence of administrative regulations, the cabinet has not achieved the goals of the Waste Tire Control Program established in KRS 224.50-824. There are no other alternatives.

8. Assessment of expected benefits of the administrative regulation: This administrative regulation applies to waste tire accumulators and waste tire processors by establishing financial assurance requirements for waste tire accumulators and waste tire processors. The expected benefit of this administrative regulation is to provide consistent standards and requirements for demonstrating financial assurance to ensure that funds are available to pay for damages resulting from waste tires or abandonment of the waste tires at registered waste tire facilities.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: This administrative regulation will be implemented throughout the Commonwealth. This administrative regulation will improve public health and environmental welfare by providing consistent standards and requirements for demonstrating financial assurance and ensuring that

funds are available to pay for damages resulting from waste tires or abandonment of the waste tires at registered waste tire facilities. Appropriate financial assurance is necessary to ensure proper management and disposal of waste tires in order to minimize environmental and public health threats.

b. State whether a detrimental effect on the environment and public health would result if not implemented: This administrative regulation will provide consistent standards and requirements for demonstrating financial assurance and ensuring that funds are available to pay for damages resulting from waste tires or abandonment of the waste tires at registered waste tire facilities. Appropriate financial assurance is necessary to ensure proper management and disposal of waste tires in order to minimize threats to public health and the environment caused by the uncontrolled accumulation and processing of waste tires. A detrimental effect could occur without this administrative regulation.

c. If detrimental effect would result, explain detrimental effect: Unmanaged waste tire accumulations and processing activities can result in threats to the environment and public safety due to hazards from fires, mosquitoes, and rodents. Aesthetic environmental value could also be diminished.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? This administrative regulation is tiered based on the type and quantity of waste tires accumulated or processed and the type of management activities performed.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.50 requires the cabinet to adopt administrative regulations and implement a waste tire removal and control program.

2. State compliance standards: There is no federal mandate for this administrative regulation. This administrative regulation establishes financial assurance requirements for waste tire accumulators and waste tire processors.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that accumulates or processes waste tires.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.50 requires the cabinet to adopt administrative regulations to implement a waste tire removal and control program. This administrative regulation establishes financial assurance requirements for waste tire accumulators and waste tire processors.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation as specified in the Regulatory Impact Analysis. If this administrative regulations does not apply to a state, county, or local office of government, expenditures will not be affected.

Other Explanation: None

**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET**  
Department for Environmental Protection  
Division of Waste Management  
(New Administrative Regulation)

**401 KAR 46:050. Tire retailer fee.**

RELATES TO: KRS 224.01-010, 224.50

STATUTORY AUTHORITY: KRS 224.10-100, 224.50-822, 224.50-824

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 and the waste tire management provisions of KRS 224.50 require the cabinet to promulgate administrative regulations and implement a waste tire removal and control program. This chapter establishes provisions for the cabinet's Waste Tire Removal and Control Program to prevent health and environmental hazards from waste tires. This administrative regulation establishes requirements for any person making retail sales of new motor vehicle tires. There are no federal statutes or administrative regulations governing the subject matter addressed in this administrative regulation.

Section 1. Applicability. This administrative regulation applies to a person making retail sales of new motor vehicle tires.

Section 2. Tire Fee. A retailer of new motor vehicle tires shall:

(1) Pay the one (1) dollar fee on each new motor vehicle tire sold as required by KRS 224.50-822; and

(2) File the monthly report required by KRS 224.50-823 with the Revenue Cabinet prior to the 20th day of each month. The report shall identify:

(a) The number of new motor vehicle tires sold for the preceding month; and

(b) The number of waste tires disposed each month.

Section 3. Tire Fee Exemption. (1) A retailer shall be exempted from the one (1) dollar fee required by KRS 224.50-822 if:

(a) The retailer enters into a waste tire exemption contract, described in Section 5 of this administrative regulation, with the operator of:

1. A residual landfill with a permit to accept only waste tires;
2. A recovered material processing facility; or

3. A recycling facility;

(b) The retailer submits to the cabinet:

1. A completed Tire Fee Exemption Request Form, DEP Form 7085, incorporated by reference in Section 6 of this administrative regulation; and

2. A copy of the contract described in paragraph (a) of this subsection;

(c) The cabinet grants the exemption; and

(d) All of the waste tires are managed or disposed in accordance with the contract.

(2) The cabinet may terminate the exemption if:

(a) The retailer fails to comply with KRS 224.50-822, KRS 224.50-823, or this administrative regulation;

(b) The waste tires are not managed or disposed in accordance with the contract; or

(c) The contracted facility is no longer permitted to manage or to dispose waste tires.

Section 4. Reapplication for the Waste Tire Exemption. Within sixty (60) days of the effective date of this administrative regulation, a retailer who was granted the tire fee exemption prior to the effective date of this administrative regulation shall submit to the cabinet a contract and a completed Tire Fee Exemption Request Form in accordance with Section 3 of this administrative regulation. If the retailer fails to submit the contract and the completed Tire Fee Exemption Request Form within sixty (60) days of the effective date of this administrative regulation, the cabinet shall terminate the exemption.

Section 5. Waste Tire Exemption Contract. The waste tire exemption contract shall, at a minimum, include:

(1) The name, address, and permit number of the facility contracted to manage or to dispose of the waste tires;

(2) The duration of the contract;

(3) The number of waste tires the facility will accept from the retailer for management or disposal;

(4) The type of waste tires to be managed or disposed;

(5) A description of how the waste tires will be managed or disposed; and

(6) The following notarized certification from the operator of the destination facility: "I certify that all waste tires accepted in accordance with this contract will be managed or disposed in accordance with this contract and with KRS Chapter 224 and 401 KAR Chapter 46."

Section 6. Incorporation by Reference. (1) The following document is hereby incorporated by reference: "Tire Fee Exemption Request Form", DEP Form 7085 (February 1997).

(2) The document referenced in subsection (1) of this section is available for inspection and copying at the Solid Waste Branch of the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, from 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, excluding state holidays.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: June 12, 1997

FILED WITH LRC: June 13, 1997 at 10 a.m.

PUBLIC HEARING: A public hearing to receive comments on this

proposed administrative regulation has been scheduled for Wednesday, July 30, 1997, at 2 p.m. eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by July 23, 1997. If a notification of intent to attend the hearing has not been received by that date, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by July 23, 1997 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the close of the public hearing on July 30, 1997. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Microsoft Word on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Microsoft Word or 3.5 inch diskettes not be available. The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodations for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by July 23, 1997.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, phone: (502) 564-2225, ext. 221, fax: (502) 564-4049.

#### REGULATORY IMPACT ANALYSIS

Contact Person: James Hale

1. Type and number of entities affected: This administrative regulation applies to any person making retail sales of new motor vehicle tires. Currently in Kentucky, there are approximately 1,500 retailers of new motor vehicle tires.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: One commenter expressed concern that the waste tire fee exemption is not being implemented consistently and that the exemption should be eliminated. One commenter stated that some retailers who have been granted an exemption from the waste tire fee are not disposing of their waste tires in accordance with the conditions of the exemption. One commenter indicated that current application of the waste tire fee exemption is providing some transporters with unfair business leverage. One commenter stated that tire retailers can support elimination of the waste tire fee exemption. The cabinet notes that since the exemption is defined in enabling legislation, it cannot be eliminated without legislative action. However, as an interim measure, the cabinet will propose requirements to rigorously monitor exemp-

tions to include only those applications clearly defined by the legislature. This action will dramatically reduce exemptions and increase intended funding for program objectives. Strict implementation of the waste tire fee exemption may require previously exempt retailers to pay the waste tire fee in order to maintain compliance with KRS 224.50-822 and 224.50-844. However, strict enforcement of the waste tire fee exemption will minimize unfair business leverage of some transporters, possibly resulting in decreased disposal costs for retailers disposing of waste tires.

2. Second and subsequent years: Costs and savings, as indicated above, should continue for the second and subsequent years.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The cabinet will experience an initial increased workload to process and grant or deny waste tire fee exemptions. However, the cabinet, through strict implementation of the waste tire fee exemption, should receive an additional \$3,000,000 in the waste tire trust fund each year. Currently, the waste tire trust fund receives approximately \$600,000 annually. An increase of funds will allow the cabinet to pursue state initiated cleanups of unregistered waste tire piles, develop market for end use of waste tires, and issue loans and grants for waste tire projects. In 1996, the cabinet spent over \$1,500,000 to cleanup five (5) abandoned waste tire piles. Many of the sites cleaned up were comprised of waste tires generated by retailers who were exempt from the waste tire disposal fee. This fee was established to ensure proper disposal of waste tires. It is estimated that as many as 300 abandoned waste tire piles exist in Kentucky. Strict implementation of the waste tire fee exemption should help ensure proper disposal of waste tires and eliminate the need to spend waste tire trust fund money to cleanup exempt tires. Additional funding will also be available to cleanup the estimated 300 waste tire piles.

2. Continuing costs or savings: The costs and savings, as indicated above, should continue.

3. Additional factors increasing or decreasing costs: If legislative action is taken to eliminate the waste tire fee exemption, additional funds will be available in the waste tire trust fund allowing the cabinet to pursue state initiated cleanups of unregistered waste tire piles, develop market for end use of waste tires, and issue loans and grants for waste tire projects.

b. Reporting and paperwork requirements: The cabinet will have an initial increase in paperwork requirements while processing waste tire fee exemptions.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenue due to this administrative regulation.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: KRS 224.50-820 provides that the waste tire trust fund may be used to pay for the cost to administer the waste tire control program. Historically the waste tire trust fund has failed to generate adequate funds to operate the waste tire control program. Expenditures not covered by the waste tire trust fund will be covered by the general fund.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: KRS 224.50-822 requires any person making retail sales of new motor vehicle tires to pay a \$1 fee on each new motor vehicle tire sold. KRS 224.50-844 allows retailers to apply for an exemption to the one dollar fee provided certain conditions are met. This administrative regulation is being promulgated to implement these statutory provisions and to meet the goals of KRS 224.50-820 to 224.50-846. This administrative regulation is based on the

authorities provided by that statute. In the absence of administrative regulations, the cabinet has not achieved the goals of the Waste Tire Control Program established in KRS 224.50-824. There are no other alternatives.

8. Assessment of expected benefits of the administrative regulation: This administrative regulation applies to any person making retail sales of new motor vehicle tires. The expected benefit of this administrative regulation is to provide consistent standards and requirements for complying with the provisions of KRS 224.50-822 and the granting of waste tire fee exemptions. This administrative regulation should minimize unfair business leverage of some transporters and provide additional money into the waste tire trust fund allowing the cabinet to pursue state initiated cleanups of unregistered waste tire piles, develop market for end use of waste tires, and issue loans and grants for waste tire projects.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: This administrative regulation will be implemented throughout the Commonwealth. This administrative regulation will improve public health and environmental welfare by providing consistent standards and requirements for complying with the provisions of KRS 224.50-822 and the granting of waste tire fee exemptions. Strict implementation of the waste tire fee and the exemption is necessary to ensure proper management and disposal of waste tires in order to minimize threats to public health and the environment caused by the uncontrolled accumulation and processing of waste tires.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Yes, a detrimental effect has already occurred. Strict implementation of the waste tire fee and the exemption is necessary to ensure proper management and disposal of waste tires in order to minimize threats to public health and the environment caused by the uncontrolled accumulation and processing of waste tires.

c. If detrimental effect would result, explain detrimental effect: Unmanaged waste tire accumulations and processing activities can result in threats to the environment and public safety due to hazards from fires, mosquitoes, and rodents. Aesthetic environmental value could also be diminished.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? This administrative regulation only applies to persons making retail sales of new motor vehicle tires.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.50 requires the cabinet to adopt administrative regulations and implement a waste tire removal and control program.

2. State compliance standards: There is no federal mandate for this administrative regulation. This administrative regulation establishes fee and reporting requirements for any person making retail sales of new motor vehicle tires.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements,

or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that is a retailer of new motor vehicle tires.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.50 requires the cabinet to adopt administrative regulations to implement a waste tire removal and control program. This administrative regulation establishes fee and reporting requirements for any person making retail sales of new motor vehicle tires.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not effect local government revenues.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will those expenditures related to compliance with this administrative regulation as specified in the Regulatory Impact Analysis. If this administrative regulations does not apply to a state, county, or local office of government, expenditures will not be affected.

Other Explanation: None

#### JUSTICE CABINET

Department of Juvenile Justice  
(New Administrative Regulation)

#### 505 KAR 1:020. Internal grievance procedure.

RELATES TO: KRS 605.095, 605.100

STATUTORY AUTHORITY: KRS 15A.160, 15A.210, 605.150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.210 requires the Justice Cabinet to adopt administrative regulations to operate secure juvenile detention facilities. This administrative regulation is necessary to establish an internal grievance procedure for a resident of a juvenile detention facility.

Section 1. Definitions. (1) "Designated hearing officer" means a supervisory level member of the clinical staff chosen by the facility superintendent to conduct the grievance procedure hearing.

(2) "Grievance aide" means a resident who has been chosen to provide aid to another resident in the grievance procedure.

(3) "Work day" means Monday through Friday exclusive of holidays.

Section 2. Applicability. A resident may file a grievance if it is believed that they have been affected by a violation of a:

(1) Department policy or procedure; or

(2) Facility rule or procedure.

Section 3. Grievance Aides. A grievance aid shall:

(1) Be:

- (a) Selected by the facility superintendent;
- (b) Trained in the grievance procedure; and
- (c) In the final stages of treatment; and

(2) Assist other residents in drafting and presenting a formal grievance.

Section 4. Procedure. (1) Informal.

(a) Prior to filing the grievance an effort shall be made to resolve the grievance informally.

(b) The resident shall talk with the staff person involved and attempt to resolve the grievance informally.

(2) Formal.

(a) If unable to resolve the issue informally the resident shall fully complete an internal grievance form and provide the following information:

- 1. The circumstances of the issue being grieved;
- 2. Efforts made to informally resolve the issue; and
- 3. The desired resolution.

(b) A copy of the form:

- 1. Shall be included in the resident's orientation package;
- 2. May be obtained in the open dorm area; and
- 3. Shall be provided upon request.

(c) The resident may be assisted by a grievance aide. If the resident or grievance aide are unable to adequately express the grievance in writing, the resident shall:

1. Request a hearing, in writing, from the designated hearing officer within two (2) work days of occurrence of the event that raised the issue; and

2. Be permitted to present the grievance verbally.

(d) A hearing shall be conducted by the designated hearing officer within three (3) work days of receiving the grievance. The following shall be present at the hearing:

- 1. The aggrieved resident;
- 2. The grievance aide; and
- 3. Witnesses deemed material by the parties.

(e) The designated hearing officer shall within three (3) work days of the conclusion of the hearing present a written response to the resident.

(f) Within two (2) work days of receiving a decision, a resident shall:

- 1. Forward his grievance to the facility director or superintendent if he is dissatisfied and wishes to have the decision reviewed; and
- 2. Submit to the director or superintendent the information provided at the hearing.

(g) Within three (3) work days of receiving the grievance, the director or superintendent shall hold a joint meeting with the:

- 1. Designated hearing officer;
- 2. Resident; and
- 3. Grievance aide.

(h) The director or superintendent shall:

- 1. Review all information necessary to resolve the issue; and
- 2. Present a written response to the resident within five (5) work days of the meeting.

(i) The following shall be forwarded to the regional director and department ombudsman at the time the final resolution is submitted to the resident:

- 1. A copy of the final resolution made by the director or superintendent;
- 2. A copy of the grievance; and
- 3. Information submitted by the parties relating to the grievance.

Section 5. General Requirements. (1) Time requirements.

(a) If a resident fails to comply with the time requirements of this administrative regulation, the grievance shall be dismissed.

(b) If the staff fail to comply with the time requirements, the

grievance shall be resolved in the resident's favor.

(c) Due to unavailability of an essential party, the time frames may be extended with the:

- 1. Written agreement of the resident and the hearing officer; and
- 2. Approval of the director or superintendent.

(2) If the hearing officer, director or superintendent is absent, the person standing in for those positions shall:

- (a) Be responsible for the handling of a grievance; and
- (b) Exercise the same powers as the absent official.

(3) If a hearing officer, director or superintendent is directly involved in a grievance, it shall be handled by his supervisor, respectively.

Section 6. Incorporation by Reference. (1) "Internal Grievance Form", (2-9-97 edition), Department of Juvenile Justice, is incorporated by reference.

(2) It may be inspected, copied or obtained at the Office of the Ombudsman, Department of Juvenile Justice, 320 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RALPH E. KELLY, ED.D., Commissioner

APPROVED BY AGENCY: June 13, 1997

FILED WITH LRC: June 13, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on July 21, 1997 from 9 a.m.-12 p.m., at the Health Services Auditorium, 275 East Main Street, CHR Building, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 14, 1997, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Raymond F. DeBolt, General Counsel, 320 West Main Street, Frankfort, Kentucky 40601, (502) 564-2738 between 8 a.m. and 4:30 p.m., Monday through Friday.

REGULATORY IMPACT ANALYSIS

Agency Contact: Ray DeBolt

(1) Type and number of entities affected: The type and number of entities affected are all families, children and adults who may be benefited by the implementation of a statewide juvenile service program through the current policies and procedures of the Department of Juvenile Justice. The implementation of the policies for compliance with the consent decree entered into with the Department of Justice will affect the 13 residential facilities, 17 group homes and 18 day treatment programs operated or contracted by the Department for Social Services, Division of Youth Services now Department of Juvenile Justice via EO 96-1576 signed November 27, 1996.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received. Implementation of these regulations will not affect the cost of living or employment in the areas served. A public hearing has been scheduled during which public comments may be received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received. Implementation of this regulation will not affect the cost of doing business in the areas served. A public

hearing has been scheduled during which public comments may be received.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: The only change in compliance, reporting and paperwork requirements for the first year is that facilities affected by the policies and procedures will be required to maintain adequate records to document compliance and management staff will be required to monitor compliance and report back as related to meeting the terms of the regulation.

2. Second and subsequent years: The only change in compliance, reporting and paperwork requirements for the second and subsequent years is that facilities affected by the policies and procedures will be required to maintain adequate records to document compliance and management staff will be required to monitor compliance and report back as related to meeting the terms of the regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will not be any first year direct or indirect costs to The Department of Juvenile Justice as the proposed regulations only implement some provisions of the voluntary consent decree entered into with the Department of Justice.

2. Continuing costs or savings: There will not be any continuing direct or indirect costs or savings to the Department of Juvenile Justice as the proposed regulations only implement some provisions of the voluntary consent decree entered into with the Department of Justice.

3. Additional factors increasing or decreasing costs: The only other factor that may decrease costs is the decrease in liability from law suits related to youth's constitutional rights as a result of the implementation of some provisions of the voluntary consent decree entered into with the Department of Juvenile Justice.

(b) Reporting and paperwork requirements: The only change in reporting and paperwork requirements is that facilities affected by the policies and procedures will be required to maintain adequate records to document compliance and management staff will be required to monitor compliance and report back as related to meeting the terms of the regulation.

(4) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Sources of revenue used to implement this administrative regulation include the Department of Juvenile Justice General Funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: A public hearing has been scheduled during which public comments may be received.

(b) Kentucky: A public hearing has been scheduled during which public comments may be received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No other alternative methods were considered because the proposed regulations are currently in effect via EO 96-1576.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There are no effects on the public health and environmental welfare, but this regulation will improve conditions for youth housed in residential treatment facilities operated or contracted by the Department of Juvenile Justice.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There are no detrimental effects on the public health or environmental welfare, but this regulation will improve conditions for youth housed in residential

treatment facilities operated or contracted by the Department of Juvenile Justice.

(c) If detrimental effect would result, explain detrimental effect: There would be no detrimental effect.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(10) Any additional information or comments: There are no additional information or comments of which we are aware.

(11) TIERING: Is tiering applied? No. This administrative regulation sets forth the policies and procedures of all offices of The Department of Juvenile Justice and is effective statewide.

**EDUCATION, ARTS, AND HUMANITIES CABINET**  
**Kentucky Board of Education**  
**Department of Education**  
**Bureau of Learning Support Services**  
**(New Administrative Regulation)**

**704 KAR 7:130. Minority teacher recruitment.**

RELATES TO: KRS 160.380(2)(d)

STATUTORY AUTHORITY: KRS 156.070, 160.380

NECESSITY, FUNCTION, AND CONFORMITY: KRS 160.380(2)(d) requires each school district superintendent to report annually the school district's recruitment process and the activities used to increase the percentage of minority teachers in the district pursuant to administrative regulations of the Kentucky Board of Education. This administrative regulation establishes the recruitment and annual reporting procedures.

Section 1. The annual report required by KRS 160.380(2)(d) shall:

(1) Be submitted by a school district superintendent to the Division of Minority Teacher Recruitment and Retention; and

(2) Include:

(a) The number and name of each minority newspaper, magazine, and journal in which an advertisement for a teacher was placed;

(b) The number and location of each career fair a school district representative attended or sponsored;

(c) The name of each college campus visited by a district representative;

(d) The name and location of each minority organization, including the NAACP, the urban league, or a church, in which a vacancy notice was posted;

(e) A description of the other recruitment efforts that were made;

(f) The number of vacancies in certified teaching positions, administrative positions, and in other administrative support staff (noncertified) positions;

(g) The known number of minority applicants in each category;

(h) The number of minority applicants interviewed in each category;

(i) The number of minorities hired in each category;

(j) The number of minorities offered, but who declined, positions in each category;

(k) The total number of positions filled; and

(l) The signature of the district superintendent certifying that the information is correct and in compliance with KRS 160.380(2)(d).

## ADMINISTRATIVE REGISTER - 239

Section 2. In collecting data to complete the annual report, each school district shall have on its application for employment a section for voluntary ethnic identification.

Section 3. For a nonprincipal certified vacancy at a school-based decision making school, the principal shall comply with the local school district's affirmative action policy or plan in making the hiring decision. For a principal vacancy for which a school council has hiring authority, the school council shall comply with the local school district's affirmative action policy or plan in making the hiring decision.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education as required by KRS 156.070(4).

Wilmer S. Cody, Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: June 12, 1997

FILED WITH LRC: June 12, 1997 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 25, 1997, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 18, 1997, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Kevin M. Noland, Associate commissioner, Office of Legal Service, Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

### REGULATORY IMPACT ANALYSIS

Contact Person: Kathryn K. Wallace

(1) Type and number of entities affected: Local school districts - 176.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Each local school district superintendent shall annually report minority recruitment activities on form provided by the Division of Minority Educator Recruitment and Retention. Compliance with the regulation should have no cost effect on the districts. Most school districts already do this on a voluntary basis.

2. Second and subsequent years: Same as above.

(3) Effects on promulgating administrative body: Allows the Department of Education to monitor the efforts of local districts to identify and recruit minority educators as required by KRS 160.380(2)(d).

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Annual report required on form supplied by the Division of Minority Educator Recruitment and Retention.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: KDE budget.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No economic impact anticipated.

(b) Kentucky: No economic impact anticipated.

(7) Assessment of alternative methods; reasons why alternatives were rejected: State law requires that the Kentucky Board of Education promulgate a regulation on this subject.

(8) Assessment of expected benefits: To monitor local district minority recruitment activities, thus hopefully to increase the pool of minority teachers in the Commonwealth.

(a) Identify effects on public health and environmental welfare of the geographical areas in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No known or anticipated detrimental effect on environment and public health.

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No known conflicting, overlapping or duplicative statute or administrative regulation.

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering is not applicable. This regulation applies equally to all local school districts.

### PUBLIC PROTECTION AND REGULATION CABINET

Department of Insurance

(New Administrative Regulation)

806 KAR 38:090. HMO open enrollment.

RELATES TO: KRS 304.17A-160, 304.38-080(3)

STATUTORY AUTHORITY: KRS 304.38-080, 304.38-150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.38-150

authorizes the commissioner to promulgate reasonable administrative regulations necessary for the proper administration of KRS Chapter 304 Subtitle 38. KRS 304.38-080(3) requires a health maintenance organization to have an open enrollment period at least every year. This administrative regulation establishes the procedures and requirements for the open enrollment period.

Section 1. (1) Each health maintenance organization which does not continually offer health benefit plans to individuals shall have an open enrollment period beginning May 1 through May 30 for individual health insurance.

(2) A policy issued through open enrollment shall have a July 1 effective date.

(3) A health maintenance organization shall make available the basic health benefit plan pursuant to KRS 304.17A-160 during open enrollment. Other standard health benefit plans may be made available during open enrollment.

(4) A health maintenance organization shall conduct open

enrollment in the service area utilized for an exclusive health maintenance organization group benefit plan. Other standard health benefit plans may be offered in their approved service areas.

(5) A new rate may be approved by the commissioner for use by a health maintenance organization exclusively for each health benefit plan sold during the open enrollment period.

Section 2. (1) If a health maintenance organization determines limits of capacity, the health maintenance organization shall submit its proposed limitations to the commissioner for authorization.

(2) The proposed limits of capacity shall be submitted to the department with supporting justification no later than March 15 prior to the open enrollment period for which authorization is requested.

Section 3. (1) A health maintenance organization shall provide adequate public notice which is reasonably calculated to inform every person in each service area referred to in Section 1(4) of this administrative regulation.

(2) A public notice of open enrollment shall be published in at least two (2) daily newspapers of general circulation in each service area of a health maintenance organization.

(3) The public notice shall be published at least once in each of the two (2) weeks immediately preceding the month of open enrollment and in each week of the month of open enrollment. The notice published the last week of open enrollment shall appear at least four (4) days before the end of the open enrollment period.

(4) The public notice shall be a display advertisement and shall be at least four (4) inches wide and six (6) inches deep.

(5) The following information shall be included in the public notice:

(a) The dates that the open enrollment period will be held and the date when coverage will become effective;

(b) The address where an individual may obtain an application;

(c) The telephone number that an individual may call to request an application, to obtain information, or to obtain a premium quotation;

(d) The date the first premium is due;

(e) Any limits of capacity;

(f) A list of health benefit plans by product type and plan design; and

(g) A list of counties where open enrollment will be held.

(6) A copy of the advertisement to be used for open enrollment shall be submitted to the commissioner by March 15 immediately preceding the open enrollment period.

Section 4. A health maintenance organization shall report the following data to the commissioner by July 15 after the conclusion of the open enrollment period:

(1) The number of applications received from each county;

(2) The number of applications accepted in each county;

(3) The number of applications rejected in each county;

(4) The basis for each rejection by county;

(5) The number of lives enrolled through the open enrollment process;

(6) The percentage of the health maintenance organization's total enrollment reflected by the open enrollment population; and

(7) The number of applications accepted for each plan design and product type offered.

GEORGE NICHOLS III, Commissioner

LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: May 29, 1997

FILED WITH LRC: May 30, 1997 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1997, at 10 a.m. (ET) at the offices of the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard shall notify this agency in writing by July 14, 1997, five days

prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received prior to 4:30 p.m. (ET) on July 21, 1997, in order to receive consideration. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Sharron S. Burton, Counsel, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, Telephone Number: (502) 564-6032, Ext. 249, Fax Number: (502) 564-1456.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Sharron S. Burton

(1) Type and number of entities affected: This administrative regulation will affect approximately 15 health maintenance organizations which have been in existence for 24 months and are offering health insurance.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments have been received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments have been received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Each health maintenance organizations must file advertising for the open enrollment period and any requests for limitations on the number of enrollees that will be accepted. Also, each health maintenance organization will be required to publish a public notice of open enrollment.

2. Second and subsequent years: This will be the same as the first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There should be no direct or indirect savings. There will be actuarial costs involved with approving rates.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The department will review advertising and limits of capacity requests as well as rates.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The normal budget for the Department of Insurance will be used.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No public comments have been received.

(b) Kentucky: No public comments have been received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Each health maintenance organization is required by statute to offer open enrollment. There is an overwhelming need for more choices to be available to consumers in the individual health insurance market. This administrative regulation is necessary in order

to set forth the requirements for the health maintenance organization open enrollment period. The open enrollment period will be held from May 1 to May 31 on an annual basis.

(8) Assessment of expected benefits: Individuals will have more choices for individual health insurance coverage.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Individuals will have more choices for individual health insurance coverage.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: In view of the limited market for individual health insurance, this administrative regulation is important to allow individuals a larger selection of alternatives with regard to health insurance coverage.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering does not apply, because this regulation will apply to all health maintenance organizations which have been in operation for 24 months.

**CABINET FOR HEALTH SERVICES  
Department For Public Health  
Division of Health Systems Development  
(New Administrative Regulation)**

**902 KAR 14:100. Advanced life support (ALS) medical first response providers.**

RELATES TO: KRS 211.950 to 211.956

STATUTORY AUTHORITY: KRS 211.952, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services. KRS 211.952(2)(c) authorizes the cabinet to promulgate administrative regulations for the licensing, inspection, and regulation of medical first response providers. This administrative regulation provides for the minimum licensing requirements for ALS medical first response providers.

Section 1. Definitions. (1) "ALS" means the utilization of certified and licensed emergency medical professionals to provide advanced prehospital medical care such as:

(a) Advanced airway management such as endotracheal intubation;

(b) Cardiac monitoring, interpretation, defibrillation, cardioversion, and pacing; and

(c) Administration of pharmaceuticals and intravenous fluids under the authority of a physician.

(2) "Affiliate ambulance service" means a Class I ground ambulance provider who has entered into a formal written agreement with an ALS medical first response provider to jointly respond to a prehospital medical emergency for coordinated medical care and transportation.

(3) "Base station" means the primary business location of a provider where administrative and personnel records are kept.

(4) "Class I ALS ground ambulance provider" means an ambulance provider licensed under 902 KAR 14:070 which meets the requirements for an advanced life support service under 902 KAR 14:080.

(5) "Continuing education" means the provision of information or training within the scope of an individual's level of certification which

is required for recertification or relicensure.

(6) "Dispatch center" means the location where:

(a) Incoming calls are initially received requesting emergency medical services; and

(b) Contact is made with the appropriate responding provider for direction to the patient scene.

(7) "Employee" means medical personnel who may be paid or volunteer, full time or part time.

(8) "Licensing agency" means the Cabinet for Health Services, Department for Public Health.

(9) "Mutual aid agreement" means a formal written agreement with another licensed provider or licensed ALS ground ambulance provider for backup assistance in the event that the provider is unable to respond to an emergency request for assistance or the emergency exceeds the capacity of the provider.

(10) "Paramedic (EMT-P)" means a person certified pursuant to KRS 311.650 through 311.658.

(11) "Prehospital care" means emergency health care provided to a patient before and during transportation to a hospital.

(12) "Provider" means an ALS medical first response provider licensed to provide ALS care.

(13) "Response time" means the time from which a call is dispatched, until a provider arrives at the patient scene.

(14) "Service" means an ALS medical first response provider licensed to provide ALS care.

(15) "Sharps" means a portion, or the whole unit, of medical supplies used in treatment procedures that may puncture the skin (e.g., needles, glass ampules, etc.).

Section 2. Licensing Requirements. The following licensing requirements shall apply to ALS medical first response providers:

(1) A person shall not provide, advertise, or profess to engage in the provision of ALS medical first response in Kentucky without having first obtained a License to Operate a Kentucky ALS Medical First Response Service, Form EMS-5, incorporated by reference.

(2) The following situations shall be exempt from the provisions of this administrative regulation:

(a) First aid or transportation provided in accordance with KRS 216B.020(3)(f); or

(b) A provider serving during a major catastrophe;

(3) A provider shall:

(a) Comply with local, state, and federal statutes and regulations; and

(b) Be established and operated by one (1) of the following organizations:

1. A city;

2. A county;

3. State government;

4. An ambulance taxing district established under KRS 108.100;

5. A fire department established under KRS Chapter 75;

6. A rescue squad established under KRS Chapter 39;

7. A licensed hospital or primary care center which:

a. Has an emergency room equipped and staffed to evaluate and treat patients with life threatening conditions; and

b. Has a radio communication system which is compatible with the radio system used by the service that will allow the provider to communicate with the transporting ambulance to provide medical direction or receive prearrival information; or

8. A corporation which is operating under contract or affiliation agreement with at least one (1) of the above organizations.

(4) The license shall be displayed in a prominent place at the service base station.

(5) The following information shall be included on the license:

(a) Identity and location of the base station;

(b) Designation of the geographic area to be served by the licensee.

1. A service area shall not exceed a fifteen (15) mile radius from

the base station allowing for a twenty (20) minute initial response time from a base station for ninety-five (95) percent of the calls received requesting assistance.

2. This does not preclude the service from providing mutual aid in unusual circumstances such as disaster assistance outside the geographic service area.

(6) An applicant for a license shall file a "Kentucky Application for an ALS Medical First Response Provider", Form EMS-4 (7/97), incorporated by reference.

(7) An applicant for a license shall, as a condition precedent to licensing or relicensing, be in compliance with the applicable requirements of this administrative regulation.

(8) The licensee shall, as a condition of licensing or relicensing, be in compliance with the reporting requirements established by the licensing agency, unless otherwise exempted by statute:

(9) A license shall expire one (1) year following the date of issuance, unless otherwise provided in the license certificate.

(10) A license may be renewed upon payment of the prescribed fee and compliance with the provisions for licensing.

(11) A license to operate shall be issued only for the person, service area, and premises listed in the application.

(12) A license shall not be transferable.

(13)(a) A new application shall be filed if a change of ownership occurs.

(b) A change of ownership for licenses shall be deemed to occur if more than fifty (50) percent of the:

1. Assets;
2. Capital stock; or
3. Voting rights of a corporation is:
  - a. Purchased;
  - b. Transferred;
  - c. Leased; or
  - d. Acquired by comparable arrangement by one (1) person from another.

(14) Upon filing a new application for a license due to change of ownership:

(a) The new license shall be automatically issued for the remainder of the current licensure period; and

(b) No additional fee shall be charged for the remainder of the licensure period.

(15) There shall be full disclosure to the licensing agency of the changes, such as name and address, of:

(a) A person having direct or indirect ownership interest of five (5) percent or more in the service;

(b) Officers and directors of the corporation, if a service is organized as a corporation; and

(c) Partners, if a provider is organized as a partnership.

Section 3. Licensing Inspections. (1) Compliance with licensing under this administrative regulation may be ascertained through on-site inspections of the provider by representatives of the licensing agency.

(2) Representatives of the licensing agency shall have access to the service during hours the service operates.

(3) A regulatory violation identified during an inspection shall be transmitted in writing to the provider by the licensing agency.

(4)(a) The provider shall submit a written plan for the elimination or correction of a regulatory violation to the licensing agency within ten (10) days of receipt of the statement of violation.

(b) The plan shall specify the date by which the violation shall be corrected.

(5) Following a review of the plan, the licensing agency shall notify the provider in writing of the acceptability of the plan.

(a) The licensing agency may conduct a follow-up visit to verify compliance with the plan.

(b) If a portion or all of the plan is unacceptable:

1. The licensing agency shall specify the reason for the unaccept-

ability; and

2. The provider shall modify or amend the plan and resubmit it to the licensing agency within ten (10) days after receipt of notice that the plan is unacceptable.

(6) Unannounced inspections may be conducted for a:

- (a) Complaint allegation;
- (b) Follow-up visit; and
- (c) Relicensing inspection.

(7) The licensing agency may:

- (a) Deny;
- (b) Revoke;
- (c) Modify; or
- (d) Suspend the license of a provider which:

1. Fails to submit, amend, or modify a plan of correction in order to eliminate or correct regulatory violations;

2. Fails to eliminate or correct regulatory violations;

3. Falsifies an application for licensing;

4. Changes a license issued by the licensing agency;

5. Attempts to obtain or obtains a license by:

- a. Fraud;
- b. Forgery;
- c. Deception;
- d. Misrepresentation; or
- e. Subterfuge; or

6. Provides false or misleading advertising;

7. Falsifies, or causes to be falsified:

- a. A patient record; or
- b. Service run report;

8. Provides an unauthorized level of service;

9. Has a history of staff violations which have resulted in disciplinary action under 902 KAR 13:090 or 201 KAR 9:141;

10. Fails to provide the licensing agency or its representative with true information upon request, or obstructs an investigation regarding alleged or confirmed violations of administrative regulations promulgated under:

- a. KRS 211.950 to 211.958;
- b. KRS 211.960 to 211.968;
- c. KRS 211.990(5);
- d. KRS Chapter 216B; and
- e. KRS 311.654; or

f. Issues a check for a license on an invalid account or an account with insufficient funds to pay the fee specified in subsection (11) of this section.

(8) If the licensing agency has reasonable cause to believe that the service creates imminent danger to the health and safety of the public, the licensing agency may issue an order directing a provider to immediately cease and desist providing services.

(9) The licensing agency may:

- (a) Deny;
- (b) Revoke;
- (c) Modify; or

(d) Suspend the license of a provider if an owner of the service is convicted of obtaining a fee by:

1. Fraud or misrepresentation; or

2. Submitting fraudulent or misleading claims for reimbursement to:

- a. An individual;
- b. A private insurance company; or
- c. A governmental agency.

(10) The licensing agency shall provide notice and an opportunity for an administrative hearing related to denial, revocation, modification, or suspension of a license in accordance with the provisions of KRS Chapter 13B and 902 KAR 1:400.

(11) The annual licensing fee, including renewal, shall be as follows:

(a) A nonvolunteer service: eighty (80) dollars;

(b) A volunteer service in which a majority of the runs are made

by an attendant who does not receive compensation: twenty (20) dollars.

**Section 4. ALS Medical First Response Operating Requirements.**

(1) A provider shall provide ALS emergency care on a twenty-four (24) hour, seven (7) days a week, basis.

(2) This provision may be met through a call system or by a written mutual aid agreement with a Kentucky licensed Class I ALS ground ambulance provider or another ALS medical first response provider.

(3) In order to foster development of full-time ALS coverage in counties where ALS services have not been previously available, the licensing agency may grant a waiver of this section to a new ALS medical first response provider.

(a) A waiver shall not exceed a period of twelve (12) months.

(b) If requested by the provider, and approved by the licensing agency, additional waivers may be granted for just cause, such as inability to obtain certified paramedics.

(4) The following priorities shall be followed for establishing a mutual aid agreement with another provider:

(a) An ALS medical first response provider or Class I ALS ground ambulance provider which is licensed to serve the same service area;

(b) An ALS medical first response provider or Class I ALS provider ground ambulance provider which serves part of the same service area or a contiguous service area.

(5) If a provider is unable to respond to an emergency call, the provider shall activate their agreement for mutual assistance with the closest available ALS medical first response provider or Class I ground ambulance provider.

(6) In order to provide for the coordinated delivery of emergency medical services and the orderly transfer of a patient, a medical first response provider shall enter into an affiliation agreement with at least one (1) Class I provider which serves all or part of the medical first response provider's service area.

(7) An affiliate agreement shall be in writing and shall address the following:

(a) Level of training and provision for joint in-service training where appropriate for personnel of both providers;

(b) Response vehicles and ambulances, including unit identifiers and the station or location from which the vehicles will be operated;

(c) How and in what manner the mutual aid agreement shall be activated including dispatch and notification procedure;

(d) Radio and other communication procedure between the medical first response provider and the ambulance provider;

(e) On-scene coordination and scene control including medical direction when several agencies respond to same incident;

(f) Exchange of patient information, records, and reports; and

(g) Terms of the agreement including effective date and provision for amendment or termination.

(8) A vehicle used in the provision of ALS medical first response services shall:

(a) Be maintained in proper mechanical operating condition with documentation maintained attesting to proper repair and condition;

(b) Comply with KRS 189.910 through 189.950 regarding the use of lights and sirens.

(9) The name of the ALS medical first response provider shall appear on the exterior surface of the vehicle.

(10) A preventive maintenance program for each vehicle and its equipment shall be developed and implemented to keep them in optimum working order.

(11) Documentation shall be maintained by the provider to support evidence of inspection, calibration, maintenance or operation of the vehicle and its equipment in accordance with:

(a) The requirements of the manufacturer;

(b) Other regulatory agencies; or

(c) The maintenance schedule of the provider.

(12) The interior of the vehicle and its equipment shall be

checked after each use to ensure that they are kept and maintained in a clean and sanitary condition, unless precluded by an emergency situation.

(13) A vehicle used to provide medical first response service shall be insured by the employee or through the insurance policies of the medical first response provider.

(14) A communication system shall be developed, coordinated, and maintained by each provider; and shall meet the following requirements:

(a) If a local or regional dispatch center or 911 arrangement exists for all or part of the service area of a provider, the provider shall have a signed affiliation agreement with the dispatch center for coordination of emergency calls;

(b) A medical first response vehicle shall be equipped with:

1. Two (2) way radio communication equipment; and

2. One (1) portable communication device per vehicle capable of contacting:

a. The dispatch center;

b. An affiliate Class I ground ambulance service; and

c. The receiving hospital;

(c) A provider shall:

1. Have a plan to assure that all calls are promptly answered and dispatched in an expedient manner in accordance with subsection (1) of this section; and

2. Provide orientation to all response personnel related to communication protocols that have been established by the service.

**Section 5. ALS Medical First Response Personnel.** (1) An ALS medical first response service shall be staffed to provide on each run at least:

(a) One (1) paramedic certified by the Kentucky Board of Medical Licensure (KBML); or

(b) One (1) physician licensed by the KBML who has evidence on file of successful completion within the last two (2) years of advance cardiac life support (ACLS) training sponsored by the American Heart Association.

(2) Personnel shall be capable of performing their job duties, and shall not cause the patient or other personnel any undue jeopardy.

(3) The driver on each medical first response run shall:

(a) Have a current motor vehicle operator's license;

(b) Have at least two (2) years of licensed driver or operator experience;

(c) Complete a defensive driving training program that is developed by the provider or in conjunction with another provider or organization which has developed a program.

(14) The defensive driving training program shall consist of at least four (4) hours and shall include:

(a) A review of driving a vehicle under emergency conditions;

(b) A review of KRS 189.910 through 189.950 regarding emergency vehicles.

(c) Forward and back-up driving maneuvers in a controlled situation, such as in an obstacle course designed specifically for this purpose; and

(d) A review of defensive driving techniques and procedures by hands-on experience or exposure by visual aids, such as video tapes, slides, or planned demonstrations.

**Section 6. Equipment and Supplies.** (1) ALS medical first response personnel shall carry and maintain in full operational order the following minimum BLS equipment and supplies:

(a) One (1) portable, manual, or electric suction with two (2) yankauer and 6F, 8F, 10F, and 14F flexible catheters;

(b) Oropharyngeal and nasopharyngeal airways, set of six (6) different sizes;

(c) A portable oxygen tank with a filled, minimum size D, secured spare portable cylinder;

(d) Masks and nasal cannulas, disposable oxygen delivery

devices with supply tubing;

(e) Disposable, clear faced bag valve mask ventilation units in 250 ml and 1000 ml with oxygen reservoir with adult and infant size masks capable of use with oxygen;

(f) One (1) bite stick;

(g) Adult, obese adult, child and infant sphygmomanometer cuffs and stethoscope. A permanently mounted sphygmomanometer shall not satisfy this requirement;

(h) Rigid, stiff cervical collars in large, medium, small, no-neck and pediatric sizes;

(i) One (1) penlight;

(j) One (1) flashlight;

(k) Two (2) sterile universal dressings ten (10) inches by thirty (30) inches;

(l) Occlusive dressings or sterile foil;

(m) Twenty-five (25) Sterile gauze pads, four (4) inches by four (4) inches;

(n) Six (6) soft roller self-adhering bandages, various sizes;

(o) Two (2) rolls of adhesive tape;

(p) Cold pack, chemical;

(q) Four (4) triangular bandages;

(r) Sterile obstetrical (OB) kit;

(s) Bandage shears;

(t) Blanket;

(u) Thermometer;

(v) Disposable gloves;

(w) One (1) clear eye protection per crew member;

(x) One (1) face mask per responding crew member;

(y) One (1) protective gown or coat per responding crew member;

and

(z) one (1) sharps container per vehicle and three (3) red disposable biohazard bags.

(2) At the point of patient contact, an ALS medical first response provider shall carry on each vehicle, and maintain in full operational order, the supplies and equipment as provided for in protocols established in Section 8(3) of this administrative regulation, and shall include the following:

(a) An endotracheal intubation set consisting of:

1. Laryngoscope handle in adult and pediatric sizes;

2. Straight laryngoscope blades in sizes 0, 1, and 2;

3. Curved laryngoscope blades in sizes 3 and 4;

4. Extra batteries and bulbs for blades and handles; and

5. Endotracheal tubes for oral and nasal placement in adult and pediatric sizes:

a. Uncuffed tube sizes 3.0, 3.5, 4.0, 4.5, 5.0, and 5.5; and

b. Cuffed tube sizes 5.5, 6.0, 6.5, 7.0, 7.5, and 8.0;

(b) Stylettes in adult and pediatric sizes;

(c) Magill forceps in adult and pediatric sizes;

(d) One-half (1/2) inch wide twill tape or equivalent for securing endotracheal tubes;

(e) Water soluble lubricant for lubrication of endotracheal and nasotracheal tubes;

(f) A portable monitor defibrillator that:

1. Provides a visual display of cardiac electrical activity;

2. Provides a hard copy of cardiac electrical activity;

3. Delivers direct current energy over a variable range which is suitable for pediatric and adult usage;

4. Has adult and pediatric external paddle electrodes for immediate monitoring of heart activity and delivery of countershock in both the adult and pediatric patient;

5. May be operated from internal rechargeable batteries;

6. Has transthoracic pacing, and synchronized countershock capability for cardioversion. This requirement applies only to equipment purchased after the effective date of this administration regulation;

7. Has a patient monitoring cable which has the following accessories:

a. Electrode paste or gel or equivalent;

b. Electrode pads or equivalent for use with the patient monitoring cable; and

c. One (1) additional roll of paper for hard copy printout.

(g) Needles, sterile, disposable: minimum of three (3) sizes shall be maintained in 18 to 25 gauge;

(h) Syringes, disposable: minimum three (3) sizes shall be maintained in 1cc to 30cc sizes;

(i) Containers for the collection of blood samples;

(j) Tourniquet for use with venipuncture procedure;

(k) Dextrostix or equivalent for the measure of blood glucose levels;

(l) Disposable, individually packaged antiseptic wipes;

(m) Intravenous fluids, macrodrip and microdrip fluid sets, extension sets and accessory items;

(n) Intravenous catheter over needle devices in 12 to 24 gauge;

(o) Butterfly needles in 19 and 23 gauge;

(p) Intraosseous needles;

(q) Pediatric drug dosage tape or equivalent which shall provide easy reference for pediatric and infant treatment and drug dosages;

(r) Nasogastric tubes in size 5F, 8F pediatric sizes, sizes 10 to 18 French adult, and sizes 50 or 60 cc catheter tipped syringes or equivalent; and

(s) Infant or neonate suction apparatus.

(3) A provider shall stock and maintain drugs and medications as required by:

(a) Protocols established in accordance with Section 8 of this administrative regulation; and

(b) Local, state, and federal statutes and regulations;

(4) A provider which stores and utilizes controlled substances shall:

(a) Have protocols approved by the cabinet's Drug Control Branch; and

(b) Shall store controlled drugs and substances in a locked compartment or equivalent approved by the cabinet.

(5) With the exception of the supplies or equipment listed in subsection (2)(p), (q), (r), and (s) of this section, and supplies and equipment listed in this section which require specific sizes to accommodate adult, pediatric, and infant patients, nothing in this administrative regulation shall be construed to require a provider to maintain the equipment required in this section if the equipment is not required by the medical protocols of the provider established in Section 8 of this administrative regulation.

(6) Drugs, IV fluids, medical devices and batteries shall be stored and maintained in accordance with manufacturer's recommendations.

Section 7. Extrication Equipment. For response to trauma scenes, a provider shall:

(1) Have an affiliation agreement to provide extrication equipment with:

(a) A fire department;

(b) Rescue squad; or

(c) A Class I ambulance provider; or

(2) Provide and maintain in full operational order the extrication equipment required for Class I ground ambulance services in 902 KAR 14:080, Section 7.

Section 8. Medical Director. (1) A medical first response provider shall have a written agreement with a physician medical director.

(2) The medical director shall:

(a) Be a physician licensed by the KBML;

(b) Have qualifications which have been reviewed by the KBML to assure compliance with 201 KAR 9:171, Section 2(6);

(c) Have completed a residency program in emergency medicine approved by the Accreditation Committee for Graduate Education; or

(d) Be a physician who holds, or is in the process of completing within one (1) year, certification in advanced cardiac life support, and

certification in advanced trauma life support or basic trauma life support; or

(e) Have on file written approval from the KBML;

(f) Assume responsibilities in accordance with 201 KAR 9:171, Sections 2(1) through (5); and

(g) Assume other responsibilities as agreed upon between the medical director and the director of the service.

(3) The qualifications of the medical director and the medical protocols shall be approved by the licensing agency only after being reviewed by the Kentucky Emergency Medical Services Council and its Medical Standards and Delegated Practice Committee.

#### Section 9. Specialized ALS Medical First Response Providers. (1)

A specialized ALS medical first response provider such as those based at:

(a) An industry;

(b) An amusement park;

(c) A college or university campus;

(d) A special event; or

(e) A sports stadium shall not provide prehospital emergency care to the general public.

(2) A specialized ALS medical first response provider which complies with Sections 1 through 9 of this administrative regulation may, with prior approval by the licensing agency, be allowed variances as provided in this section.

(3) A specialized license shall specify the limitations of the provider which shall be approved by the cabinet.

(4) In reference to Section 4(1) of this administrative regulation, a specialized provider shall not be required to provide emergency care on a twenty-four (24) hour, seven (7) days a week basis.

(5) In reference to Section 4(6) of this administrative regulation, a specialized provider shall not be required to have an affiliation agreement with a local or regional dispatch center or 911 service.

(6) A specialized provider shall be required to meet the equipment, supplies, and personnel requirements as listed in Sections 6, and 7 of this administrative regulation, with variances approved by the cabinet in accordance with approved medical protocols in Section 8 of this administrative regulation.

(7) A specialized provider desiring variations in equipment, supplies, or personnel shall submit the requests in writing for consideration and approval by the cabinet.

#### Section 10. ALS Medical First Response Management Requirements. A provider shall:

(1) Establish lines of authority and an organizational chart to include the designation of:

(a) An administrator responsible for assuring compliance with this administrative regulation during the daily operation of the service; and

(b) A designee who shall serve if necessary in the absence of the administrator.

(2) A provider shall develop a run form or an electronic equivalent reporting mechanism to be completed for each run where contact with a patient is made. The reporting mechanism shall contain the Kentucky emergency medical services (EMS) data elements for ALS medical first response providers (04/16/97), which is incorporated by reference.

(3) A copy of the data elements for each run shall be:

(a) Provided to the affiliate ambulance service which transports the patient;

(b) Kept and available for inspection or reporting to the licensing agency according to guidelines established by the licensing agency and in a manner of confidentiality and safekeeping for a minimum of five (5) years from the date on which the service was rendered, or in the case of a minor, until five (5) years after the minor reaches eighteen (18) years of age; and

(c) Forwarded to the cabinet within thirty (30) days following the end of the month in which the run was made. The data may be

reported on a form or in an electronic equivalent format which is compatible with the cabinet's EMS information system.

(4) Employee files shall be maintained for:

(a) A minimum of five (5) years following termination, or retirement from employment; or

(b) Five (5) years following the demise of the employee.

(5) Individual personnel files shall contain evidence of:

(a) Training;

(b) Experience; and

(c) Current credentials including proof of:

1. Paramedic certification with corresponding number and expiration date; or

2. Physician's license;

(d) Current and valid driver's license;

(e) A preemployment criminal and Department of Transportation driver's records check for each employee;

(f) Health records to include:

1. Written evidence of a preemployment health assessment having been conducted by a physician or a licensed advanced registered nurse practitioner (ARNP) stating the employee is capable of performing assigned job duties; and

2. Health records including records of all illnesses or injuries occurring while on duty.

(5) Maintain and follow written administrative, personnel, medical, and other operational policies and procedures that are reviewed on an annual basis by the provider in order to assess their effectiveness. The policies and procedures shall be developed to include the following areas:

(a) Organizational structure, staffing, and allocation of responsibility and accountability;

(b) Mutual aid agreements and agreements with other providers;

(c) Personnel performance guidelines; and

(d) A plan to assure that a continuing education program shall be provided for its staff. The program shall include:

1. Evidence of continuing education for staff regarding acquired immune deficiency syndrome (AIDS), hazardous materials awareness training, and infection control, including the handling of infectious waste in accordance with Centers for Disease Control guidelines.

2. A plan for response to, and the protection and decontamination of, the patient, equipment, and staff if called upon to respond to a patient exposed to hazardous chemicals;

3. A plan for assessing all other staff continuing education needs, with a coordinated development of methods to meet those needs; and

4. The maintenance of training rosters or other written records to support continuing education conducted by, or at the request of, the licensee.

(e) A plan for the quality assessment of patient care including a periodic review of run report forms, and evaluation of staff performance related to patient care.

(f) Policies and procedures concerning:

1. Standard operating procedures (SOPS);

2. Patient protocols; and

3. Medical response.

Section 11. Material Incorporated by Reference. The following material is incorporated by reference and may be inspected, obtained, or copied at the Office of the Commissioner, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. to 4:30 p.m., Monday through Friday:

(1) Form EMS-5, "License to Operate a Kentucky ALS First Response Service", (7/97).

(2) Form EMS-4, "Kentucky Application for an ALS Medical First Response Service Licensing", (7/97).

(3) Kentucky EMS Data Elements for ALS First Response (4/16/97).

RICE C. LEACH, M.D., Commissioner

## ADMINISTRATIVE REGISTER - 246

JOHN MORSE, Secretary

APPROVED BY AGENCY: June 9, 1997

FILED WITH LRC: June 13, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1997 at 9 a.m. in the Cabinet for Health Services Auditorium, Department for Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 14, 1997. If no notice of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments to: Mae B. Lewis, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7900.

### REGULATORY IMPACT ANALYSIS

Agency Contact person: Robert Calhoun

(1) Type and number of entities affected: Approximately 20 licensed ambulance services and other organizations which may desire to provide this level of service.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. This administrative regulation will have no effect on the cost of living and employment in this state. However, additional jobs may be created by newly licensed ALS medical first response providers.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. This administrative regulation, when implemented, will have no effect on the cost of doing business in any geographical area within the state. This administrative regulation establishes a new licensing category called ALS medical first response. Costs to provide this service to existing licensed ALS ground ambulance services which do not have to be separately licensed will be minimal. A newly licensed service will incur costs between \$10,000 to \$16,000 for equipment and consumable supplies for each medical first response unit. Personnel costs will range from zero for volunteer services up to approximately \$30,000 per attendant for paid services. Costs for response vehicles will range from zero for services who already have vehicles to several thousand dollars for each vehicle purchased.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: ALS medical first response services will be required to meet the same reporting and paperwork requirements as licensed ambulance services. This administrative regulation will have no effect on costs or competition.

2. Second and subsequent years: As above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Additional staff time will be required to license and inspect ALS medical first response services. The amount of staff time will depend on the number of services licensed. It is estimated that it costs \$800-\$1000 to license and inspect a new service.

2. Continuing costs or savings: As above.

3. Additional factors increasing or decreasing costs: Travel costs and the number of services licensed.

(b) Reporting and paperwork requirements: Licensing files will have to be maintained.

(4) Assessment of anticipated effect on state and local revenues: Annual licensing fees may partially offset costs.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General Funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: It is not anticipated that this administrative regulation will have an economic impact.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were rejected because this administrative regulation complies with the requirements of KRS 211.952 to address specific requirements for medical first response providers.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation will have a beneficial effect on public health by setting minimum standards for advanced life support medical first response providers.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Yes

(c) If detrimental result would result, explain detrimental effect: There would be no minimum standards ALS medical first responders would have to meet.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy will conflict, overlap, or duplicate this administrative regulation.

(a) Necessity or proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. Tiering was not applied because this administrative regulation addresses only advanced life support medical first response providers.

### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes. Local governments may establish a new ALS medical first response service.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This administrative regulation will affect only those local governments which choose to license the service.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to the provision of emergency medical services.

4. How does this administrative regulation affect the local government or any service it provides? This administrative regulation may affect a local government by increasing costs of emergency medical services, however if there is not an existing ALS ground ambulance services this administrative regulation may provide a cost effective way of providing advanced life support without in lieu of an advanced life support ground ambulance service.

**CABINET FOR HEALTH SERVICES**  
**Department For Medicaid Services**  
**Division of Administration and Development**  
**(New Administrative Regulation)**

**907 KAR 1:003. Repeal of 907 KAR 1:004.**

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520 authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed, or opportunity presented, by federal law for the provisions of medical assistance to Kentucky's indigent citizenry. This administrative regulation repeals 907 KAR 1:004 which is no longer needed because the policy which was included in that administrative regulation has been relocated in three (3) topical administrative regulations; 907 KAR 1:645, 907 KAR 1:655, and 907 KAR 1:665.

Section 1. 907 KAR 1:004, Resource and income standard of medically needy, is hereby repealed.

LARRY A. MCCARTHY, Deputy Commissioner

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: June 11, 1997

FILED WITH LRC: June 12, 1997 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1997 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 14, 1997 five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4th Floor - West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

**REGULATORY IMPACT ANALYSIS**

Agency Contact Person: Ked Fitzpatrick or Trish Howard

(1) Type and number of entities affected: None

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$0

2. Continuing costs or savings: \$0

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: To be implemented statewide.

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: If this regulation is not promulgated, there will be multiple regulations with identical policy information in them, contrary to provisions of KRS Chapter 13A.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

**FEDERAL MANDATE ANALYSIS COMPARISON**

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

## ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

### Minutes of June 10, 1997

The June meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, June 10, 1997, at 10 a.m. in Room 149 of the Capitol Annex. Representative John Arnold, Chairman, called the meeting to order, and the roll call was taken. The minutes of the May 13, 1997 meeting were approved.

**Present were:**

**Members:** Representative John Arnold, Chairman, Senators Nick Kafoglis, Joey Pendleton; Dick Roeding; Representatives Jimmy Lee, James Bruce, Woody Allen.

**LRC Staff:** Greg Karambellas, Steve Lynn, Donna Little, Susan Wunderlich, Angela Phillips, Donna Valencia, Susan Eastman, Dan Risch, Trish Howard, Cindy Schweickart.

**Guests:** Connie Malone, Kent T. Young, Office of the Attorney General; Dennis L. Taulbee, Council on Higher Education; Paul D. Jones, Jennifer Hays, Revenue Cabinet; Michael A. Mone', Board of Pharmacy; Sharon Weisenbeck, Paula Stone, Nathan Goldman, Board of Nursing; Tom Bennett, John Phillips, David C. Yancy, John Phillips, Department of Fish and Wildlife Resources; Edward S. Ford III, Department of Agriculture; Robert W. Logan, Ralph Schiefferle, Gary Levy, Jack Wilson, Lisa Detherage, Vicki Ray, Martha Hall, Natural Resources and Environmental Protection Cabinet; Robert E. Nickel, David Wicker, Office of the Petroleum Storage Tank Environmental Assurance Fund; Barbara Jones, Jack Damron, Stephen Durham, Brenda Priestley, Department of Corrections; Sandra Pullen Davis, Transportation Cabinet; Johnnie Grissom, Mike Armstrong, Robert Sherman, Kevin Noland, Robert Lumsden, Pat Hurt, Department of Education; Ronda Tamme, Education Professional Standards Board; Jeanne Pherson, Sue Simon, Department for the Blind; Gordon Goad, Alcoholic Beverage Control Board; Eugene D. Attkisson, Department for Mines and Minerals; Rick Bender, Brian Gilpin, Division of Oil and Gas; Ellen Navolio, Joyce Bryant, Carolyn Morrissey, Robin Haggard, John K. Bondurant, Janie A. Miller, Sharron S. Burton, Department of Insurance; Deborah Eversole, Tom Dorman, Jeff Johnson, Wayne Bates, Public Service Commission; Karen P. Jones, Kim Lyon, Kentucky Housing Corporation; Jidy Walden, Housing, Buildings and Construction; William O'Banion, Mike Littlefield, Trish Howard, Pamela J. Aldridge, Nora McCormick, Sandra Rolland, Joyce Marshall, Duane C. Dringenburg, Michael Cheek, Karen Doyle, Jerry Whitley, Eric Friedlander, Cookie Whitehouse, Cabinets for Families and Children and Health Services; Ruby Jo Cummins, Kentucky Association of Health Care Facilities; Forest M. Skaggs, Kentucky Telephone Association; Thomas W. Breidenstein, AirTouch Cellular; Marie Alagia Cull, Atria; Michelle Bickford, Suzette McCanless, Emeritus Corp; Irene Jenkins, Leggot McCall Retirement Properties; Tawnya Hensley, Stonecreek Lodge; Lowell Reese, Kentucky Roll Call; Pamela C. Hagan, Diana L. Blair, Liz Grabowski, Kentucky Nurses Association; Beth Partin, Pam King, Kentucky Coalition of Nurse Practitioners and Nurse Midwives; John Brazel, Kentucky Chamber of Commerce; Sam Crawford, Kentucky Farm Bureau; Tom Fitzgerald; Kentucky Resources Council; Glenn Johnson, Mayor of City of Henderson; Shawn R. Wright, Bob Gish, Henderson Water and Sewer Utilities; Bert May, City of Mount Sterling; Bob Thompson, City of Lawrenceburg; Gary Larimore, Kentucky Rural Water Assn.; Mitch Jones, Danny Caudill, Donnie Davis; Morehead Utility Plant Board; Anita Kerr, Vernon Azevedo, Winchester Municipal Utilities; Hurtis L. Givens, Ghassan A. Dughaiish; Alcan Ingot; Morris Lee, Alcan Aluminum Corp.; David B. Eaton, Mayor of Shelbyville; Jerry Deaton, Kentucky League of Cities; Charlie Muntz, Council For Exceptional Children; Laurel True, AARP; Roy Strange, KOA; Dandridge F. Walton, Rick Foley, KAHCF; Carl Sumner, Insurance Institute of Kentucky; Ted Bradshaw, Insurance Agents; Carol L. Grissett, parent; Carole H. Long, parent; Teresa Caudill, Anna J. Mojsejenko, KFTC; Bryon Reynolds, Equitable

Resources; James T. Javins, Michael Wallen, Kentucky Oil and Gas Association; Keith Moffatt, Columbia Natural Resources, Inc.; Paul Whitty, Jack Ruf, Louisville Jefferson Planning Committee; Libby Marshall, Gay Dwyer.

**The Subcommittee determined that the following administrative regulation, as amended by the promulgating agency and the Subcommittee, was deficient:**

**Natural Resources and Environmental Protection Cabinet:  
Department for Environmental Protection: Division of Water:  
Public Water Supply**

401 KAR 8:030 & E. Water treatment plants; water distribution systems; certification of operators. (Emergency Expired on 5/20/97) Jack Wilson, Director, Division of Water, Gary Levy, Branch Manager, Certification Branch, Natural Resources and Environmental Protection Cabinet; and Mr. Glen Johnson, Mayor, Henderson, appeared before the Subcommittee.

Mr. Wilson stated that: (1) the primary effect of this administrative regulation was to lower the requirements of some of the operator provisions; (2) in 1996, the concern had been whether drinking water plants were able to comply with the staffing requirements imposed by administrative regulations that were originally amended in 1990; (3) Representative Lee had sponsored two bills during the 1996 Regular Session that would have: (a) established provisional licensure; and (b) allowed plants that treated water during more than one shift to use a lower class operator on additional shifts; (4) during discussions on this legislation, Secretary Bickford committed to: (a) study these issues and the concern over the ability of facilities to comply with existing administrative regulations; and (b) promulgate emergency administrative regulations to deal with these issues; (5) after the Cabinet had met several times with a number of interested parties: (a) emergency administrative regulations were promulgated, October 1996; and (b) followed by the promulgation of the ordinary administrative regulation being considered by the Subcommittee; (6) this administrative regulation provides for a 2 year provisional staffing plan for a facility, with a possible 2 year extension; (7) during the period in which the emergency administrative regulation was in effect, the Cabinet received 35 applications for provisional staffing, of which 20 or so were approved, and 15 under review; (8) the Cabinet studied the population thresholds for classifying facilities; (9) there seemed to be agreement that population was not the appropriate determining factor; (10) the new system of classification was based on the: (a) type of treatment filter used; and (b) size of the system; (11) in addition, because of the concern raised about the time it took an individual to become a Class IV operator, the time was reduced by 2 years; (12) application of the new system of classification established by this administrative regulation would result in: (a) a decrease in classification for 106 of 500 systems in the state; and (b) 381 remaining in the same classification; and (c) an increase in classification for approximately 41; (13) the issues had been addressed by reducing the: (a) total number of Class IV plants by approximately 25 per cent; (b) statewide requirement for the number of operators by roughly 115; (c) permitted provisional classification for: 1. a maximum period of 4 years for a number of facilities to have time to come into compliance and obtain additional staff; and 2. reduced the number of years of experience required for the highest class operator by 2 years; and (14) the Cabinet believes it has reduced requirements as much as it can without affecting the quality of water and public health.

In response to questions by Senator Kafoglis, Mr. Wilson stated that: (1) this administrative regulation attempted to address the problem communities were having in meeting the requirements of the original administrative regulation, in particular the inability to hire

qualified operators or to qualify operators of the highest level required; (2) even though the Cabinet had numbers indicating that there were sufficient Class IV operators across the state, it recognized that: (a) in some communities, it was difficult to attract them to the community; and (b) the numbers of the highest classified operators was close, because some of them were unavailable everyday for hands-on operation, because they had moved on to management positions.

In response to Senator Kafoglis' question relating to problems the Cabinet had encountered with water quality, Mr. Wilson stated that, while there was not a huge number, from day-to-day there were a number of violations of a variety of types across the state, including the: (a) maximum contaminant levels; and (b) administrative violations.

In response to Senator Kafoglis' question relating to violations by Class IV facilities, Mr. Wilson stated that there were some.

Senator Kafoglis stated that: (1) rather than arbitrary definitions of certification, the quality of water was the issue that should be addressed and of primary concern; (2) after his review of the issues raised, it seemed that quality was not addressed; and (3) if water systems are meeting quality standards, arbitrary classifications should not be imposed on them.

Mr. Wilson stated that: (1) quality of water was the concern; and (2) the Cabinet believed there was a relationship between the level of experience and education of the operator and the day-to-day operation of the plant and its compliance with state and federal regulations.

Senator Kafoglis stated that he was: (1) uncertain whether the Cabinet was trying to solve a problem or create a problem; and (2) not convinced that there was a problem with quality.

Mr. Wilson stated that: (1) the administrative regulations relating to the requirements for operator certification dated back to the 1940's; (2) Kentucky was the fifth or sixth state to establish a requirement for operator certification; (3) it has consistently been believed that there is a relationship between the quality of the: (a) operator in running a facility; and (b) water produced; (4) a well-run water treatment plant is very important for the protection of public health; and (5) some tiering of the capabilities of operators is necessary to fit with the type of treatment that takes place.

Senator Kafoglis: (1) stated that, while he understood the point made by Mr. Wilson, it still appeared that: (a) the emphasis should be on quality; (b) if plants were meeting quality standards, the imposition of arbitrary standards was unnecessary; and (2) asked why there would be a need to meet certain certifications if plants: (a) hired qualified people in order to meet quality standards; and (b) can meet quality standards with those they have hired.

Mr. Wilson stated that he believed the Cabinet could show that: (1) operators who are inexperienced have more problems; (2) whatever the classification may be, facilities with inexperienced, uncertified operators may have more problems meeting the requirements; and (3) it was an issue of: (a) training; (b) experience; and (c) the relationship to the sophistication of the type of treatment.

Senator Kafoglis stated that: (1) his concern was the level of quality; and (2) he had not seen evidence that there was a serious problem in quality. Mr. Wilson stated that: (1) a demonstration of the value of this administrative regulation was shown to the extent there was not a problem with quality; and (2) it would not be generally acceptable to the public to not require a higher level of treatment plant operator until there was a serious violation or possible health problems.

In response to questions by Representative Allen relating to the difference in qualifications between Class III and Class IV operators, and shift requirements, Mr. Wilson stated that: (1) training and experience requirements are escalated between a III and IV; (2) education could be substituted for experience, up to the base year of in-plant experience; (3) experience could be substituted for education; (4) when water was being treated, an operator was required; and (5)

for Class II systems: (a) a properly certified operator was required on the day-time shift when water was being treated; and (b) while operational procedures performed on other shifts had to be conducted under the supervision of a properly certified operator, the other operators would not have to be Class II operators.

In response to a question by Senator Roeding relating to whether Kentucky water systems had corrected violations quickly, Cabinet personnel stated that: (1) most systems attempt to return to compliance as quickly as possible; and (2) often, there was a temptation on the part of some system managers to go with the least certified operator possible because of the cost savings; (3) this made it difficult for an operator who was not properly certified, or sufficiently competent, to deal with the problems in a plant and return it to compliance; and (4) while the Cabinet had very good experience with most systems, there continued to be systems that attempt to do the minimum possible, including staffing, which inevitably led to continuance compliance problems. Mr. Wilson stated that: (1) not all compliance problems were operator related; and (2) some compliance problems could require changes in treatment.

Cabinet personnel agreed with Senator Roeding's statement that 90 to 95 per cent of water systems react correctly to violations. Senator Roeding asked whether the requirements of this administrative regulation were established for the minority of systems. In response to a question by Senator Roeding relating to the term, "unusual and unforeseen events" in the amendment to this administrative regulation, and whether this term would assist systems that were affected by flooding problems and needed extra time, Cabinet personnel stated that: (1) the problem faced by these systems was understood by the Cabinet; (2) this term illustrates the type of problem addressed by this administrative regulation; and (3) several Cabinet personnel tried to assist facilities to return to a proper level of treatment where required.

Representative Lee stated that: (1) he had cosponsored legislation relating to the classification of water systems and operators; (2) there was a sufficient number of votes to enact the legislation; (3) the reason the bills were not submitted to committee was because the sponsors met with the Secretary, and agreed to withdraw the legislation because of the promises and commitment made by the Secretary; (4) one of the commitments made was that relief would be granted to water plants or districts that had more than one plant making water, by permitting a certified qualified operator of a lower classification to operate the plant, with the operator of with the higher required classification on call and available in case of problems to immediately respond and correct the problems; (5) this administrative regulation established this principle on a provisional basis for two years, and a possible extension for another two years; (6) the extension is not mandatory; (7) the requirements relating to provisional certification established by this administrative regulation did not reflect the agreement that led to the withdrawal of the legislation by its sponsors; (8) rather than addressing other issues of the agreement by incorporating the agreement, other parts of this administrative regulation simply delay the implementation date of the stiffer requirements by a couple of years; (9) he believed that a person with the highest classification on call would work; (10) in many cases, a person operating a plant will be eligible for the higher classification within a short period of time; (11) he believed that the Cabinet has not lived up to the agreement made with the co-sponsors as a condition for withdrawal of legislation that could have been enacted; and (12) this administrative regulation did not fulfill the commitments made by the Cabinet. Representative Lee moved to find this administrative regulation deficient.

The Subcommittee approved Representative Lee's motion to find this administrative regulation deficient.

Mr. Johnson stated that: (1) the city of Henderson believed that the Division of Water promoted an administrative regulation under the guise of improving water quality that has virtually no direct relation toward improved water quality; (2) that water quality is not altered by

the reclassification brought about by this administrative regulation is shown to be especially true for systems with no change in personnel or facilities that are simply reclassified; (3) he believed that this administrative regulation was originally motivated by a coalition between the operators certification section regulatory staff and the Kentucky Water and Wastewater Operations Association in order to force higher operator wages; (4) no other reason explains why an administrative regulation with so many problems and conflicts would have been proposed on an emergency basis; (5) the claims by the Division of Water that the amendments to the existing administrative regulation will improve water quality were unsupported and could not be practically demonstrated; (6) there seemed to be an unending stream of bureaucratic regulations that are forced upon cities without any consideration of cost to benefit; (7) the realization must be reached that the cost of compliance is far more hazardous to public health than the existence of the implied water control risk the Division has attempted to make the public believe; (8) it was wrong to use the regulatory process to serve a special interest purpose; (9) while he supported fair wages for all public employees, this was not the mechanism to use to enforce higher wages for one segment of the public workforce; (10) the continuing, main, objection to this administrative regulation was that it did not allow a proper mechanism, within a reasonable time frame, and without a determination that water plants were in noncompliance during a transition, to: (a) replace operators; or (b) bring lower classifications of operators up a class; (11) it was self-defeating to promulgate an administrative regulation that forces a determination of noncompliance; (12) while recent amendments proposed by the Division to reduce the experience requirements for a Class IV operator from seven years to five years were steps toward a practical administrative regulation, all the problems raised by this administrative regulation have not been addressed adequately; (13) our constituents would be better served, if attention, energy, and funds were focused on things that would really affect water quality rather than wasting resources on fragmented, highly questionable, inflationary regulations such as this administrative regulation; (14) the City of Henderson felt that this administrative regulation would: (a) result most notably in hundreds of thousands of dollars in additional costs to the citizens of Kentucky; and (b) return little, if any, benefit; (15) cities currently stand alone in bearing the cost of water quality; (16) most other cities in Class II and IV systems like Henderson were ensuring that the technology, personnel, and equipment were in place to protect the health of the citizens they serve; (17) current federal and state drinking water administrative regulations are more than sufficient to protect the health of Kentucky's citizens, without adding cost-prohibitive, multi-layered bureaucratic regulation such as this one; and (18) he was opposed to the approval of this administrative regulation, even as amended at the Subcommittee meeting.

Representative Lee stated that: (1) comments had been made that if the Subcommittee found this administrative regulation deficient, the Cabinet would enforce the existing administrative regulation to the fullest extent; and (2) he would suggest to the Division of Water that it: (a) follow the provisions of this administrative regulation until the General Assembly resolves the issues raised; and (b) not return to the practice of finding many plants deficient by using the old administrative regulation.

Mr. Wilson stated that, while: (1) the Division would not seek to exact retribution on plants for the Subcommittee finding of deficiency, it would be required to enforce the administrative regulation as it existed before its amendment; and (2) there was enforcement discretion.

Representative Lee stated that: (1) enforcement discretion was the practice before the emergency administrative regulation was promulgated; and (2) under the understanding that new administrative regulations would be adopted or statutes would be enacted establishing the requirements in 1996, the Division: (a) operated under the previous version of this administrative regulation; and (b) allowed lee-

way; (3) he urged the Division not to change its practice and begin strictly enforcing the existing administrative regulation simply because this administrative regulation had been found deficient; and (4) he, and other legislators, would be disappointed if this came about.

Mr. Johnson stated that: (1) he had a letter signed by Mr. Wilson; and (2) it was stated in the third paragraph of the letter that: (a) although the emergency administrative regulation was no longer in effect, and the existing administrative regulation did not recognize provisional staffing plans, the Division did not expect to take action against water systems only for operator deficiencies until it knew the final outcome of this administrative regulation; (b) if either legislative subcommittee that reviewed this administrative regulation disapproved it: 1. its provisions would not go into effect; and 2. existing administrative regulations would not allow provisional staffing plans; and (c) your system could then be subject to enforcement action if it is not in compliance with the existing administrative regulation.

Mr. Wilson stated that: (1) the letter was an accurate description of the situation; (2) a system could be held in violation; (3) whether the Division would exercise discretion was a different issue; and (4) in 99 per cent of the situations of which he was aware, the issue of operator certification has only been raised in an enforcement action if there were other violations of administrative regulations.

Senator Roeding stated that, in light of all the testimony, he wished to change his vote and vote to find this administrative regulation deficient.

Senator Kafoglis stated that: (1) in reviewing the issue, he had the impression that the emphasis was not appropriately placed; (2) he believed the emphasis should be on the quality of water; (3) he wondered if the Cabinet could: (a) re-examine this issue; and (b) develop a system that provides water systems with more flexibility by emphasizing quality; (4) if a system was found to be out of compliance with regard to water quality, require the system to develop a plan for correcting the problem, rather than impose a top-down, regulatory system that may or may not improve quality; (5) if water systems produce water of good quality, they should have substantial flexibility; (6) the emphasis should be on quality; (7) rather than credentials operators have, what comes out of the pipe was what counted; (8) if water quality is poor, requiring the system to develop a plan to improve water quality may require the hiring of people with better credentials; and (9) this approach is better than imposing a system that is arbitrary and provides very little flexibility.

Chairman Arnold asked Cabinet personnel to work with Henderson and other cities that had a problem with this administrative regulation to develop something on which all could agree.

This administrative regulation was amended as follows: (1) Sections 1(1)(b),(c), 1(2)(b),(c)1.-5., 1(3), 4(2)(b), and 5(4) were amended to make it clear that "responsible charge" meant the person in direct responsible charge; (2) Section 1(7) was amended to cross reference Section 4(1) which related to the issuance of the wallet card referenced in Section 1(7); (3) Sections 1(9)(a),(c), 3(4), 3(6), 4(2)(c), 5(4), 5(5), 6, 6(7), and 8(4)(c)2., were amended to insert shall to clarify that the action or requirement was mandatory, pursuant to KRS 13A.222(4)(b); (4) Sections 1(8)(b)2.a., 1(8)(b)4., 1(9), 1(9)(a)4., 1(9)(c), and 4(2)(c) were amended to: (a) clearly establish requirements; (b) when Cabinet action shall be taken; and (c) delete ambiguous language; (5) Section 4(7)(a) was amended to delete the suggestion for the training of operators with limited experience, because it did not establish a requirement for training; (6) Section 3(1) was amended to insert the name of the required form; (7) Sections 3(5), 4(7)(a), 4(7)(e), 5(2), were amended to: (a) delete "but not limited to"; (b) insert the specific items or conditions, or standards; or (c) make it clear that the sections or subsections included only the items, conditions, or standards that were specified; (8) Section 6(1) was amended to add a new paragraph, (b), to provided for the reclassification of nontransient noncommunity water systems that: (a) treat water primarily for an industrial process; and (b) have a limited employee consumption or use of water that averages less than 10 per

cent of its average daily production averaged over the most recent 12 month period; and (9) Sections 8(2)(a)2., 8(2)(b)2., 8(2)(c)2., 8(2)(d)2., 8(2)(e)2., 8(2)(f)2., 8(2)(g)2., 8(2)(h)2., 8(3)(a)2., 8(3)(b)2., 8(3)(c)2., and 8(3)(d)2., were amended to: (a) delete "acceptable operation"; and (b) insert "experience operating", in order to establish that experience in operating a plant was the requirement intended by acceptable operation of a plant.

**The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:**

**Council on Higher Education: Public Educational Institutions**

13 KAR 2:080. State Autism Training Center. Dennis Taulbee, General Counsel, represented the Council. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (3) Sections 1 through 5 were amended to: (a) delete language that repeated or summarized the statute, as required by KRS 13A.120(2)(i); and (b) comply with the: 1. format requirements of KRS 13A.220(4); and 2. drafting requirements of KRS 13A.222(4).

**Revenue Cabinet: Office of General Counsel: Division of Tax Policy and Research: Income Tax; Corporations**

103 KAR 16:200. Consolidated Kentucky corporation income tax return. Jennifer Hayes and Paul Jones represented the Division.

In response to a question by Senator Roeding, Ms. Hayes stated that this administrative regulation would not cost Kentucky any money to implement. Mr. Jones stated that the administrative regulation implemented legislation that was passed during the 1996 Regular Session of the Kentucky General Assembly.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (2) Sections 1 through 9 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); (3) Section 2 was amended to cross-reference the applicable statutes; and (4) Section 9 was amended to incorporate by reference the required forms.

**Board of Pharmacy**

201 KAR 2:106. Pharmacy, manufacturer, or distributor closures. Michael Moné represented the Board. This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (2) Sections 1 and 3 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

**Board of Nursing**

201 KAR 20:057. Scope and standards of practice of advanced registered nurse practitioners. Nathan Goldman, General Counsel, represented the Board. In response to questions by Senator Kafoglis, Mr. Goldman stated that: (1) the primary category of nurses who did not prescribe medications consisted of nurse anesthetists; (2) while all advanced registered nurse practitioners were required to have an established protocol with a physician, an advanced registered nurse practitioner who did not choose to prescribe medication was not required to have a collaborative practice agreement; and (3) the amended administrative regulation implemented legislation enacted during the 1996 Regular Session regarding the prescriptive authority of advanced registered nurse practitioners.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (2) Sections 1, 2, 6, and 8 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (3) a new Section 9 was created to incorporate by reference the scope and standards of practice statements.

**Department of Fish and Wildlife Resources: Game**

301 KAR 2:178. Deer hunting on wildlife management areas. This administrative regulation was amended as follows: (1) Sections 2, 3, and 5 were amended to restore language inadvertently deleted; (2) Section 5 was amended to: (a) clearly establish the hunting season at Grayson Lake Wildlife Management Area; and (b) clarify the requirements applied to crossbow hunting; and (3) a new Section 6 was created to incorporate by reference the "Application for Quota Hunt," as required by KRS 13A.2251.

**Department of Agriculture: Division of Animal Health: Livestock Sanitation**

302 KAR 20:180. Restrictions equine viral arteritis. Rusty Ford represented the Department. In response to a question by Senator Roeding, Mr. Ford stated that: the amendments to this administrative regulation: (1) dealt primarily with the diagnostic procedures that the Department followed in diagnosing equine viral arteritis; (2) were made to reflect the advancements in technology and science in the diagnostic procedures; and (3) had the full support of the equine industry.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (2) Sections 1 through 10 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); (3) Section 5 was amended to correct an internal cross-reference; and (4) Section 7 was amended to delete language that repeated or summarized statutes, as required by KRS 13A.120(2)(e) and (f).

**Office of the Petroleum Storage Tank Environmental Assurance Fund**

415 KAR 1:130. Small owners tank removal account. Robert Nichol, Executive Director, David Walner, Principal Assistant for the Technical Operations Group, and David Wicker, Staff Attorney, represented the Fund. In response to a question by Representative Bruce, Mr. Nichol stated that: (1) the Fund had the money to pay the costs of a clean up; (2) the Fund looked at the invoices very closely; and (3) delays in payment resulted from problems with the invoices of some contractors.

In response to questions by Senator Kafoglis, Mr. Nichol stated that: (1) the contractor determined the work that would be done in the field on behalf of the Fund; (2) the Fund did not have the people or the authorization to be in the field while corrective action was being performed; (3) in order to catch abuses, the Fund had to closely scrutinize the invoices and requests for claims it received from tank owners; (4) the UST branch and the Natural Resources and Environmental Protection Cabinet had the inspectors that should be in the field doing the inspections of site cleanups; (5) he did not know if the potential for abuse could ever be erased in a fund of this sort; (6) a lot of the abuses were based on the contractor's knowledge and experience in this area; (7) contrary to statements of the Courier-Journal and Herald-Leader, many of the abuses were: (a) not associated with the markups; and (b) associated with the: 1. number of hours a contractor billed to a project; 2. number of monitoring wells put in a site; and 3. number of soil samples that were taken; (8) there might be 8 or 9 wells installed, even though 3 or 4 wells would be

adequate to monitor and characterize the site; (9) some contractors may take 50 to 60 or more soil samples which was unnecessary; (10) prior to doing the work, a contractor did not have to submit a plan for correction to the Fund if: (a) there was a release on the site; (b) it was an emergency; (c) the Natural Resources Cabinet, UST branch, directed the contractor to take care of the emergency and perform a site check to determine: 1. the vertical and horizontal extent of the contamination; and 2. whether groundwater had been contaminated; (11) if extensive contamination was found, they would: (a) do a detailed site investigation; (b) prepare a corrective action plan; and (c) submit the plan to the UST branch and Natural Resources Cabinet; (12) while this was going on, a contractor could: (a) be out doing the field work; and (b) complete a project before a contractor could file a claim with the agency; (13) there was no pre-approval process in Kentucky for certified contractors; (14) the USEPA has stated that: (a) it would like to see a pre-approval process; (b) with the limited staff resources of the agency and the Natural Resources Cabinet, it would bring more delays in: 1. getting the pre-approval before the work could be started; and 2. in reimbursing tank owners for their cost. (15) the agency: (a) was looking at different options; and (b) may ask the General Assembly to give the Fund the authority to audit the books and records of certified contractors who perform the clean up.

David Walner stated the small owners removal account administrative regulation: (1) was different from the manner in which the agency previously has conducted business; (2) was set up as a pre-approval type of program; (3) would give the Fund the ability, prior to the contractor getting on the site, to review the: (a) costs; and (b) work to be performed.

Senator Kafoglis stated that: (1) when this information appears in the media, the Fund should review this situation, because it causes the public to lose faith in how effectively government is spending the public's tax dollars; (2) the agency needed to provide accountability for the expenditure of tax funds; and (3) while he was not sure of the appropriate solution, he hoped that the Fund would address the problem.

In response to a question by Senator Roeding, Mr. Nichol stated: (1) the \$3 million per year that was committed to the Petroleum Storage Tank Fund in this account would be transferred from the financial responsibility account into the small owners tank removal account; (2) the agency had two accounts in the Fund: (a) the financial responsibility account, which is the account required by the USEPA to cover corrective action and third party liability up to \$1 million each for operators currently in compliance with EPA requirements; and (b) the Petroleum Storage Tank account: 1. provided operators who were not currently in full compliance with EPA requirements up to \$1 million in corrective action; and 2. did not provide third party liability coverage; and (3) when the motor fuels tax section of the Revenue Department collected the 1.4 cent per gallon gasoline tax, it: (a) transferred this to the financial responsibility account; and (b) took it out of that account and placed it in the PSTA and this account.

Senator Roeding stated that: (1) most of the problems he heard about regarding this situation with the Fund was about the length of time it took to close a site; (2) most people were trying to close these tanks in the right method; (3) it was a terrible financial drain on these people; and (4) he hoped that the agency would help these people.

Mr. Nichol stated that the: (1) Petroleum Storage Tank Fund did not make the final decision of when a site was ready for closure; and (2) UST branch and the Natural Resources and Environmental Protection Cabinet made the closure decision.

Representative Lee stated that: (1) this administrative regulation was part of legislation that he sponsored to assist small mom and pop operators; (2) the large fuel companies sold them small operators the tanks for one dollar; (3) many of the small operators: (a) wound up owning the tanks; (b) were not aware that they would be responsible for all corrective action later; (b) had since gone out of business; (4) in some cases: (a) one of the parties had died; and (b) the remaining

spouse had the responsibility of disposing of the property; (5) there was no way a small operator could sell the property with the underground tanks because no one would buy it; (6) in many cases, these individuals had less than \$50,000 per year gross income; (7) this Fund is: (a) not for people who have the money to remove the tanks from their property; (b) for those individuals who: 1. can least afford to pay; and 2. were hoodwinked into buying the tanks; (8) this administrative regulation accomplished 2 things: (a) it put the property back into a use that created a tax base; and (b) removed the tank and pollution out of the ground; (9) judging from the newspaper articles, in the 1998 Regular Session, the General Assembly needed to look at the process that is being used, which allowed a contractor, without supervision, to: (a) submit as many samples as he wanted; and (b) perform as much remedial action as he thought was necessary in a surrounding area; (10) he: (a) had sponsored most of the underground tank legislation since 1994; and (b) intended to look at it again in 1998 to determine what action needed to be taken; (11) if half of the newspaper story is true, Kentucky was losing more money than it would take to have inspectors take the samples; and (12) if we had inspectors: (a) we would know what remedial action needed to be taken; and (b) the contractors would no longer decide this.

In response to a question by Senator Kafoglis, Mr. Nichol stated that: (1) the latest data from the Natural Resources Cabinet indicated that initially there were 42,000 or 43,000 tanks registered in Kentucky; (2) the agency estimated that there may be another 10,000 to 15,000 tanks in the ground that have not been: (a) identified; or (b) registered; (3) about 17,000 to 19,000 tanks were still active; (4) 15,000 to 20,000 tanks: (a) had been removed; or (b) were scheduled for removal; and (5) the agency may be halfway through the process of solving the problem of underground tanks.

In response to a question by Representative Bruce, Mr. Wicker stated that: (1) at the time the tanks were sold, they were: (a) active; and (b) considered to be an asset; and (2) the oil companies knew what they were doing when they sold the tanks to small operators.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to correct statutory citations; and (2) Sections 1, 2, 3, 5, and 6 were amended to comply with the drafting requirements of KRS 13A.222(4).

#### **Justice Cabinet: Department of Corrections: Office of the Secretary**

501 KAR 6:170. Green River Correctional Complex. Jack Damron, staff attorney, and Steve Durham, Office of General Counsel, represented the Department. This administrative regulation was amended as follows: GRCC 18-02-01 and GRCC 19-01-02 were amended to comply with the drafting requirements of KRS 13A.222(4).

#### **Execution Hearings**

501 KAR 8:010 & E. Execution hearings. Jack Damron, staff attorney, and Steve Durham, Office of General Counsel, represented the Department. In response to a question by Representative Bruce, Mr. Damron stated that this administrative regulation was: (1) mandated by statute; and (2) not a further postponement of an execution.

In response to a question by Representative Bruce, Mr. Durham stated that: (1) the Attorney General had informed the Department that all of McQueen's appeals had been exhausted; (2) there was one action pending in the Western District of Kentucky, filed by the American Civil Liberties Union to challenge the method of execution; (3) there were no more criminal appeals to be issued; (4) the United States Supreme Court had denied any further stays of the action; and (5) it was anticipated that Mr. McQueen's execution would take place.

This administrative regulation was amended as follows: (1) The RELATES TO paragraph and Sections 2, 4, and 6 were amended to comply with the drafting requirements of KRS 13A.222(4); (2) The NECESSITY, FUNCTION, AND CONFORMITY paragraph was

amended to: (a) correct statutory citations; and (b) accurately state the necessity for and function served by the administrative regulation, pursuant to KRS 13A.220(3)(f); (3) Sections 2 and 3 were amended to comply with the formatting requirements of KRS 13A.220(4); (4) Section 5 was amended to comply with the: (a) formatting requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (5) Section 5(1) was amended, pursuant to KRS 13A.120(2)(i), to: (a) provide notice of a petition to the Attorney General; and (b) direct the hearing officer to grant a petition by the Attorney General to intervene.

**Kentucky Board of Education: Department of Education: Bureau of Learning Support Services: Office of Instruction**

704 KAR 3:305. Minimum requirements for high school graduation; high school transcripts. Kevin Noland, General Counsel, represented the Department. Subcommittee staff stated that: (1) there were two amendments to this administrative regulation; (2) the first amendment: (a) was drafted by Subcommittee staff; and (b) contained the drafting and formatting amendments to comply with the requirements of KRS Chapter 13A; and (3) the second amendment: (a) was prepared by the Department to address concerns raised by the Subcommittee at its May 13, 1997, meeting; and (b) clarified that a local board was authorized to substitute an alternative course for a required course for a student with a disability.

Mr. Noland stated that: (1) he would keep his comments brief because the Subcommittee heard extensive testimony on this administrative regulation at its May 13, 1997, meeting; (2) at that meeting, Chairman Arnold requested the Department: (a) meet with people who had testified before the Subcommittee regarding students with disabilities; and (b) try to work out a solution to the concerns; and (3) the Department: (a) met with the interested people; (b) worked out an amendment to the administrative regulation that resolved their concerns; (c) submitted the proposed amendment to members of the Subcommittee in a May 30, 1997, letter; and (d) sent Subcommittee members a letter dated May 25, 1997, that: 1. was signed by each concerned person who attended the Subcommittee's May 13 meeting; and 2. signified that the amendment satisfied the concerns raised by those individuals.

In response to questions by Senator Roeding, Mr. Noland stated that: (1) this administrative regulation established the minimum requirements for high school graduation; (2) the amendment added a subsection to this administrative regulation to state that: (a) for students with disabilities, a local board of education may substitute a functional, integrated, applied, interdisciplinary or higher level course for a required course, if the alternative course: 1. provided rigorous content; and 2. addressed the same applicable components of 703 KAR 4:060; and (b) if a substitution was made, a rationale and course description shall be filed with the Department of Education; (3) under this amendment, a course could be offered that was appropriate to students with disabilities if: (a) the course: 1. met the requirements that already existed for a course substitution under this administrative regulation; or 2. was a functional course; and (b) the local board of education determined that the substitution was appropriate; and (4) the people who appeared before the Subcommittee's May 13 meeting on this issue were satisfied with the amendment.

In response to a question by Senator Roeding, Chairman Arnold stated that: (1) he had received a letter from each group that they were satisfied that the problems raised at the May 13 meeting had been resolved with this amendment; and (2) if the interested parties were satisfied, the Subcommittee members should not have a problem with the amendment.

In response to questions by Senator Roeding, Mr. Noland stated that: (1) the requirement still existed for one additional credit in science, social studies, and the arts; (2) the state board had: (a) discussed the high school graduation requirements for several months; (b) received input from: 1. superintendents; 2. arts educators; and 3. others; and (c) considered the statutory requirement in the

learning goals regarding arts and humanities; (3) an arts credit was required in 30 states; (4) some principals who already required an arts course testified at the two public hearings on the administrative regulation that: (a) the number of students at their schools who took vocational education courses had increased because the individual career plan encouraged students to think about their future career choices as they entered high school; and (b) the students who did not know their career choice also took vocational education courses; (5) the individual career plan: (a) was not a tracking program similar to the European method; and (b) enabled a student and his parents to: 1. change the career emphasis of the student at any time; and 2. begin a different graduation plan; (6) this administrative regulation did not tie students into a certain educational track, because students were not bound to the goals and plans the students made; (7) students were required to choose 7 elective courses, which included vocational education courses; (8) some citizens wanted the visual and performing arts course as an elective instead of a requirement; and (9) while he could not speak for those individuals, he did not think they were totally satisfied with the administrative regulation because the visual and performing arts course was a requirement.

Senator Roeding requested that this administrative regulation be deferred until an agreement could be reached regarding the required visual and performing arts.

Representative Lee: (1) stated that: (a) this administrative regulation had been extensively discussed; (b) a tremendous amount of apprehension and questions about this administrative regulation existed; and (c) he thought the 138 members of the General Assembly should decide this issue, rather than the seven members of the Subcommittee; and (2) moved that the Subcommittee request the Legislative Research Commission to refer this issue to the appropriate legislative subcommittee for possible legislative action during the 1998 Regular Session of the General Assembly.

The Subcommittee approved Representative Lee's motion to request the Legislative Research Commission to refer the issue to the appropriate legislative subcommittee for clarification during the 1998 Regular Session of the General Assembly.

In response to a question by Representative Bruce, Chairman Arnold stated that this administrative regulation would probably be referred to the education committee for its recommendations to the full General Assembly.

In response to questions by Representative Bruce, Representative Lee stated that: (1) the 1998 General Assembly would decide: (a) whether the arts and humanities should be a mandated or elective course; and (b) the legislative intent on that issue; (2) he did not think the Subcommittee should make a decision for the entire General Assembly because the issue was too: (a) complicated; and (b) important to the people who were concerned about certain portions of this administrative regulation.

Subcommittee staff stated that: (1) this administrative regulation would become effective after the next committee reviewed it; and (2) the Legislative Research Commission would refer the issue to the appropriate interim committee for: (a) study; and (b) a report to the General Assembly on the issue.

Representative Lee stated that: (1) each person who was concerned about this administrative regulation would have the opportunity to: (a) appear before the Education Committee; and (b) state his case; and (2) the General Assembly would decide the matter.

In response to a question by Senator Kafoglis, Subcommittee staff stated that: (1) the interim committee's action regarding review of this administrative regulation was separate from action it might take in response to Representative Lee's motion to refer the issues raised by this administrative regulation; and (2) pursuant to Representative Lee's motion, the interim committee was required to: (a) study the issue; (b) determine if legislation was necessary; and (c) report back to the General Assembly.

Representative Lee stated that: (1) even if the interim committee

approved this administrative regulation and did not recommend legislative action on this issue, he was certain that several legislators would file legislation to address this issue during the 1998 Regular Session of the General Assembly; and (2) he did not think the Education Committee would decide not to take action on this issue.

Subcommittee staff stated that: (1) the motion to refer the issue was: (a) approved by the Subcommittee; and (b) separate from the consideration of the administrative regulation by the Subcommittee; (2) the interim committee would do two separate things: (a) it would review the administrative regulation; and (b) receive a notice from the Legislative Research Commission to: 1. consider the issues; 2. determine whether legislation was needed; and 3. report their determinations to the General Assembly.

In response to a request by Senator Roeding to find this administrative regulation deficient, Representative Arnold stated that he could almost guarantee legislation would be filed during the 1998 Regular Session to resolve this issue.

Senator Roeding requested that he be recorded as voting: (1) no, on the approval of the administrative regulation; and (2) yes, on the approval of Representative Lee's motion to refer the issue.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to insert the word "to", which had been inadvertently omitted; and (2) Section 2 was amended to: (a) correct a statutory citation; (b) comply with the: 1. format requirements of KRS 13A.220(4); and 2. drafting requirements of KRS 13A.222(4); and (c) clarify that a local board may substitute an alternative course for a required course for a student with a disability.

#### **Workforce Development Cabinet: Department of Vocational Rehabilitation: Department for the Blind**

782 KAR 1:030. Scope and nature of services. Jeanne Pherson and Sue Simon, Office of General Counsel, represented the Department. In response to a question by Senator Roeding, Ms. Pherson stated that: (1) payment for the cost of books, supplies, and other needed educational materials was based upon the highest rate that was permitted; (2) she thought that the University of Kentucky had the highest rate; (3) the amount of money the agency spent depended upon what courses the client was taking; and (4) she did not know how much money the Department was spending.

This administrative regulations was amended as follows: (1) The STATUTORY AUTHORITY paragraph and Section 19(3) were amended to correct statutory citations; (2) The NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to: (a) correct statutory citations; and (b) comply with the drafting requirements of KRS 13A.222(4); (3) Section 1 was amended to include the requirement that an eligible individual have a medical examination to determine disability, KRS 13A.100; (4) Section 4(2) was amended to clearly state that an employer provide the same benefits to an eligible individual that were provided to other employees, pursuant to KRS 13A.222(4)(a); (5) Section 4(4) was amended to clearly state that an: (a) eligible individual strive to make satisfactory progress; and (b) employer provide training reports, pursuant to KRS 13A.222(4)(a); (6) Sections 7, 14, and 17 were deleted at agency request, because they were no longer applicable; (7) Section 7(5) was amended to require that an eligible individual clearly designate the purpose of a maintenance expense, pursuant to KRS 13A.222(4)(a); (8) Section 8(1) was amended to clearly state the requirement that travel by public transportation be by the most economical method, pursuant to KRS 13A.222(4)(a); (9) Section 11(6) was amended to clearly state that an eligible individual was responsible for repairing or replacing defective equipment, unless involved in post-employment services, pursuant to KRS 13A.222(4)(a); (10) a new subsection, Section 19(2), was created to provide that one with a more serious impairment receive priority for services, pursuant to KRS 13A. 222(4)(a); (11) Section 19(6), which provided that the commissioner direct the order of selection for services through a written memorandum repeated or

summarized applicable statutes, and was deleted, pursuant to KRS 13A.100; (12) Section 19(7) was amended to clearly state that an individual would be reclassified if his level of impairment increased and was documented, pursuant to KRS 13A.222(4)(a); (13) Sections 3, 7, 9, 10, 11, 15, 16, 17, 19 were amended to comply with the: (a) formatting requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); (14) Sections 2, 3, 4, 5, 6, 19, and 19 were amended to comply with the formatting requirements of KRS 13A.220(4); and (15) The RELATES TO paragraph, and Sections 3, 5, 6, 7, 8, 11, 12, 13, 15, 17, 18, and 19 were amended to comply with the drafting requirements of KRS 13A.222(4).

#### **Department of Alcoholic Beverage Control: Licensing**

804 KAR 4:340. Brew-on-premises license. Gordon Goad, General Counsel, Department of Alcoholic Beverage Control Licensing, and Karen Thomas Lentz, attorney, Brewworks Micro brewery of Northern Kentucky, appeared before the Subcommittee. This administrative regulation was amended as follows: (1) The STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to correct statutory citations; and (2) Sections 3, 6, 7, 9, and 11 were amended to comply with the drafting requirements of KRS 13A.222(4).

#### **Department of Mines and Minerals: Division of Oil and Gas**

805 KAR 1:160. Posting of a danger sign on a facility used for the storage of oil. Rick Bender, Director, Eugene Atkisson, Staff Attorney, represented the Department of Mines and Minerals. Rick Bender, Director, and Brian Gilpin, Assistant Director, represented the Division of Oil and Gas.

Mr. Bender stated that this administrative regulation: (1) established the minimum requirements for a danger sign to be posted at a tank facility; and (2) was modeled after a sign that was generated: (a) by the Oil and Gas industry; and (b) pursuant to statutes enacted in 1994.

This administrative regulation was amended as follows: (1) The RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) Section 4 was amended to: (a) delete the maximum size requirement for a sign; and (b) comply with the drafting requirements of KRS 13A.222(4); (3) Sections 3 and 6 were amended to comply with the: (a) formatting requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); (4) Section 5 was amended to comply with the formatting requirements of KRS 13A.220(4); and (5) Sections 1, 2, and 3, were amended to comply with the drafting requirements of KRS 13A.222(4).

805 KAR 1:170. Content of the operations and reclamation proposal; form on which the proposal is filed. Tom FitzGerald, Director of the Kentucky Resources Council, Inc.

Mr. Bender stated that: (1) this administrative regulation: (a) was promulgated for an operation reclamation proposal on a severed mineral tract; (b) contained the form on which that proposal was filed with the Division; (c) was a result of a statute enacted by the 1994 General Assembly; (d) had been considered by the Subcommittee last year and found deficient; (2) the agency had: (a) removed the section that gave rise to the finding of deficiency; and (b) inserted language that conformed to the agreement of all parties.

Mr. FitzGerald stated that: (1) there was an issue of constitutional proportions and fairness in this administrative regulation that should be addressed; (2) the statute contemplated that if a person wanted to develop the oil, he must: (a) approach the owner of the severed surface; and (b) provide a reclamation plan; (3) if the surface owner disagreed with the plan, the statute required: (a) mediation; and (b) payment of a \$100 non refundable mediation fee by all parties; (4) if the mediation did not result in an agreement, the mediator could: (a) recommend acceptance of the original plan of the operator; or (b) suggest modifications to the proposal for adoption by the agency; (5) a problem arose if there was a surface owner who: (a) was indigent;

and (b) could not afford the mediation fee; (6) a Kentucky Supreme Court case: (a) addressed the requirement of prepayment of civil penalties; (b) held that a prepayment requirement was unconstitutional because it prevented indigent people from having their day in court if they can not pay; (7) this administrative regulation presented the same constitutional problem because it did not provide for a hardship waiver that permitted: (a) someone to demonstrate that he could not afford the fee; or (b) participation by a person who could not pay; (8) this prevented an indigent person from having his legitimate concerns addressed by mediation; (9) the agency could not amend the statute provision that required payment of the mediation fee; (10) the agency: (a) went further than the statute required; and (b) directed that, in all cases, the mediator shall: 1. accept the operator's proposal if the surface owner failed to take part in mediation; and 2. recommend approval of the operator's proposal; (11) the mediator did not have the discretion to make recommendations, even if there were problems with the mineral owner's proposal for drilling; (12) the statute contemplated that the mediator have the discretion to consider and recommend changes: (a) if there was not an agreement; (b) if the landowner could not participate; and (c) if the mediator felt they were necessary to comply with the intent of the statute, which is to fix damage; and (13) there would not be an agreement if the indigent surface owner could not participate.

In response to questions by Senator Kafoglis, Mr. FitzGerald stated that: (1) his proposal was not directed at a landowner who: (a) could not afford to engage in the mediation process; and (b) chose not to; (2) indigence could be defined by state or Federal guidelines for poverty; (3) the agency could make a finding of indigence by using an affidavit that stated that the person could not afford to participate without affecting his ability to meet his basic needs; (4) an affidavit was used by courts to: (a) waive court costs; and (b) for the provision of legal services; (5) this fee was similar to court costs in that a mediator was deciding the surface owner's rights; (6) a person's inability to pay should not stand in the way of a person having his rights vindicated; (7) this was a new statute; (8) in the Kentucky River area, seventy-five percent of the surface and minerals were in several hands; and (9) there was a strong possibility there would be owners who: (a) owned only the surface; and (b) might not have the resources to participate in the mediation process.

Mr. Atkisson stated that: (1) he: (a) was statutorily designated as the mediator; (b) received all requests for mediation; and (c) to the best of his memory, had not had anyone assert indigence as a reason for his lack of participation; and (2) it was not uncommon for his office not to receive a response to a letter it had sent: (a) advising that there had been a request for mediation; and (b) inviting the surface owner to participate.

In response to a question by Senator Kafoglis, Mr. Atkisson stated that: (1) the agency could not make the accommodation suggested by Mr. FitzGerald because: (a) the statute mandated that the \$100 fee be paid by each person who participated in mediation; and (b) the agency did not have the discretion to waive payment of the fee; (2) the statute predicated the ability to make a recommendation on mediation having occurred; (3) mediation cannot be conducted if: (a) only one party had entered into the process; and (b) a response had not been received by the other party; and (4) he could not recommend changes in the absence of a different proposal.

Mr. FitzGerald stated that: (1) he: (a) had not seen the text of the letter sent to the parties; and (b) assumed the letter stated that if a person wanted to participate in mediation, he should remit \$100; (2) the Department was having no shows because people: (a) looked at the letter; and (b) decided that they could not afford to take part; and (3) there was no reason for people to contact the Department because nothing in the letter indicated that they could have the fee waived.

In response to questions by Senator Kafoglis, Mr. FitzGerald stated that: (1) he: (a) did not think the complete mediation statute was unconstitutional; (b) thought the requirement of a \$100 fee was

constitutionally suspect; (2) he disagreed with Mr. Atkisson that if mediation did not occur, the Department did not have the flexibility to recommend changes in the operator's proposal, even if the mediator had determined that the changes were appropriate; (3) the case file would: (a) contain the landowner's objection; and (b) indicate that there were concerns with the proposed plan; (4) the Statute required: 1. mediation; and 2. an agreement; or 3. the absence of an agreement; and (5) if someone could not take part in mediation: (a) there was an obvious lack of agreement; and (b) the mediator could recommend changes.

Mr. Atkisson stated that: (1) Mr. FitzGerald was correct up to a certain point; (2) his file usually did not have a statement of objection by the surface owner; (3) normally, all he knew was that, for whatever reason, the surface owner had declined to sign or approve the operations and reclamation proposal tendered to him by the prospective operator; (4) the issue of the mediation that he conducted the day before related to money; (5) the surface owner in that case: (a) did not object to the proposal; and (b) wanted more money from the operator in order to permit the operator to come onto his property; (6) this was not a matter that could be addressed by: (a) the Department of Mines and Minerals; or (b) the mediator; (7) it was incorrect to assert that the Department was always aware: (a) of the basis of the surface owner's objection; or (b) that the surface owner had actually made an objection; (8) requests for mediation were made if the surface owner could not be located; (9) the Department would send a letter to the last known address provided by the oil or gas company; and (10) he did not always know what it meant if a person did not: (a) appear; or (b) respond to his letter.

In response to questions by Senator Kafoglis, Mr. Atkisson stated that: (1) there was no provision in the letter sent by the Department regarding the action someone should take if he: (a) was indigent; and (b) could not afford mediation; (2) the letter reflected the requirement of the General Assembly that a payment of \$100 be paid to participate in the mediation; (3) he did not know if the Department could provide the \$100 fee for indigent person because an argument could be made that the Department was bestowing an impermissible benefit to one party in the mediation process; (4) mediation was: (a) not arbitration; and (b) a process whereby the mediator attempted to bring the parties to a common point; (5) if the parties could and did agree, it was not the function of the mediator to determine whether one of the parties should have held out for more money; and (6) the Department would not force a party to take a position that it did not: (a) volunteer to assert; or (b) agree to take.

In response to questions by Senator Kafoglis, Mr. FitzGerald stated that: (1) KRS 353.5901(5) provided that if an agreement was not forthcoming after mediation, the mediator shall consider five factors: (a) use of the surface; (b) whether the use was reasonable; (c) the location of roads; (d) the timing of the operation; and (e) the impact on other land uses; (2) this was: (a) not a matter of the mediator making sure there was a good deal; and (b) a matter of making sure that the: 1. statute was satisfied; and 2. the use of the surface was not unreasonable; (3) regardless of whether all parties show up, the mediator should consider the statutory five factors in all cases; (4) he thought: (a) this was intended by the statute; and (b) the mediator should have the flexibility to recommend some changes; (5) an operator proposal that was patently unreasonable would not be a proper use of the surface; (6) the Department was suggesting that if a landowner did not show up at the hearing and pay \$100 to object, the mediator had to accept the proposal; (7) he thought that the agency would want the flexibility to follow the statutory criteria in all cases; (8) that the mediator would not know the other side of the story was a problem; (9) he understood the statute contemplated in all cases that if there was not an agreement with the surface owner, the role of the mediator was to make sure that the statutory criteria were met; (10) the mediator should: (a) not act as an advocate for the landowner; and (b) act as an advocate for the reasonable use of the surface of the land, because that was the purpose of the statute; (11)

the provision requiring that the mediator "shall" accept the operator's proposal should be amended to state "or make recommendations for modifications."

In response to a question by Senator Kafoglis, Mr. Atkisson: (1) stated that Mr. FitzGerald's proposal was imminently reasonable, except that the statute required the mediator to consider the five statutory factors after mediation; and (2) asked how it could be said that mediation had occurred if only 1 party had elected to participate.

Senator Kafoglis: (1) stated that he did not know the definition of mediation, but understood that you had to have two parties; and (2) asked if the mediator would have some responsibility to consider a fair settlement if one party was not present.

In response to a question by Senator Kafoglis, Mr. Atkisson stated that: (1) he had conducted fifteen to twenty mediations in two years; (2) often, reasonable use of the surface was: (a) the subject of mediation if both sides were present; and (b) affirmatively addressed; (3) an argument could be made that if the surface owner did not participate in mediation, and the mediator imposed different conditions from those originally proposed, he had: (a) become an advocate for the silent surface owner; and (b) done so in the absence of affirmative information that it was desirable; (4) he was not sure on what basis the mediator or the Department would be authorized to change a proposal if there were no opposition to it; (5) in the mediation that he had conducted the day before, the man had: (a) not been concerned about the road, livestock, timber, or fences; and (b) been concerned about money; (6) as mediator, he: (a) could not have known what the person's concern was; (b) would have imposed his own assumptions, values and judgments upon the situation; and (c) would have done so in error if he had made changes the day before.

Mr. FitzGerald stated that the statute provided that all surface owners have to agree or the mediator would have some discretion in making the recommendation. Mr. FitzGerald asked whether, in light of this requirement, there could be an agreement that adversely impacted two owners, if all four owners were not present. Mr. FitzGerald stated that this did not appear to differ from the situation when a sole owner failed to show up. Mr. FitzGerald stated that the believed the statutory criteria imposed the obligation to make recommendations if the mediator felt they were necessary.

In response to a question by Senator Kafoglis, Mr. FitzGerald stated that: (1) based upon the statutory criteria, the mediator should be able to make recommendations on what he deemed necessary; (2) Mr. Atkisson: (a) was a seasoned mediator; and (b) knew what was and was not responsible surface management of an oil and gas operation site; and (3) the statute required him to: (a) look at these factors; and (b) weigh them in making his recommendation.

Mr. Atkisson stated that: (1) he and Mr. FitzGerald were making a legal argument; (2) there was a basis for both of their positions; (3) until or unless the statute was amended, the Department had no option but to charge the \$100 fee as directed and required by the General Assembly; (4) if the Department determined that it should not charge the surface owner, should it also not charge the oil and gas company because it puts it at an economic disadvantage; and (5) many legal arguments could be made, but until the statute was amended, the Department was obligated operate in the current manner.

Mr. Bender stated that the bill under which the statute was enacted was: (1) negotiated; and (2) the language was agreed upon.

In response to a question by Senator Kafoglis, Mr. FitzGerald stated that: (1) referral of this issue to a legislative subcommittee would be an appropriate resolution; and (2) he: (a) believed that the Department had the authority to interpret the phrase, "after mediation", to include failed mediation because a party had been unable to participate; (b) hoped that there would not be a legal challenge to the statute before January; and (c) thought the Department's interpretation rendered it constitutionally suspect.

The Subcommittee approved a motion by Senator Kafoglis to request that LRC refer this administrative regulation to the appropriate

legislative subcommittee for any appropriate action that it deemed necessary.

Chairman Arnold stated that this motion: (1) did not mean that this administrative regulation would not become effective; and (2) meant that the Natural Resources committee would: (a) probably take the issues raised by this administrative regulation under consideration; and (b) make the proper recommendations to the General Assembly.

This administrative regulation was amended as follows: (1) Section 1(5) was deleted due to repetition of KRS 353.595(1)(e), KRS 13A.222(4)(d); (2) Section 4(3) was deleted due to repetition of KRS 353.5901(4), KRS 13A.120(2)(e); (3) Section 10(1) was amended to comply with the formatting requirements for the incorporation by reference of forms; and (4) Sections 4, 5, and 9 were amended to comply with the drafting requirements of KRS 13A.222(4).

805 KAR 1:180. Production reporting. Rick Bender, Director, Eugene Atkisson, Staff Attorney, represented the Department of Mines and Minerals. Rick Bender, Director, and Brian Gilpin, Assistant Director, represented the Division of Oil and Gas. Mr. Bender stated that: (1) this administrative regulation was an enabling administrative regulation for production reporting; and (2) the required information was vital for the economic development of the mineral resources of the Commonwealth.

This administrative regulation was amended as follows: (1) The RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) The NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to comply with the drafting requirements of KRS 13A.222(4); (3) Section 2(1) was amended to: (a) clearly state the requirement that an operator keep records of monthly production, pursuant to KRS 13A.222(4)(a); and (b) comply with the formatting requirements of KRS 13A.220(4); (4) Section 1(1) was amended to comply with the formatting requirements of KRS 13A.220(4); and (5) Section 4(1) was amended to include the title of the form incorporated by reference.

#### Department of Insurance: Fees and Taxes

806 KAR 4:010. Fees of the Department of Insurance. Sharron Burton, General Counsel; Joyce Bryant, Licensing Division; and Janie Miller, Life and Health Division, represented the Department. Subcommittee staff stated that the amendment to this administrative regulation: (1) included drafting and formatting amendments to comply with KRS Chapter 13A; (2) corrected statutory citations; and (3) changed the fee for a copy of a document on file with the Commissioner from 30 cents a page to 50 cents a page, because KRS 304.4-010 specifically required the 50 cents charge.

In response to questions by Senator Roeding, Ms. Miller stated that: (1) the fee for an annual statement was increased from \$100 to \$150 because: (a) the fee had not been raised since 1982; and (b) the Department wanted the fee to: 1. be commensurate with the fees of other states; and 2. reflect the Department's extensive review of a certificate of coverage or certificate of authority; (2) the \$150 charge was at the low end of what other states charged for the same service; and (3) several other fees were increased.

In response to a question by Senator Roeding, Ms. Burton stated that: (1) this administrative regulation included increases in several fees; (2) because the Department had not made major fee increases since 1982, the operations of the Department was funded on fees that were established fifteen years ago; (3) the Department: (a) believed the fee increases were commensurate with other states based on the Department's research of the fee amounts in surrounding and other states; and (b) had not been notified of any opposition to this administrative regulation either: 1. in submitted comments; or 2. through a public hearing; (4) some fees were newly established to address extensive and time-consuming filings with the Department; and (5) while several people had requested a copy of the proposed administrative regulation, the Department had not received input relating to the proposed amendments.

In response to questions by Senator Roeding, Ms. Miller stated that the increase in fees would raise approximately \$3 million, depending on whether the increase in the number of filings and activities continued at the same level they were this year.

In response to a question by Senator Kafoglis, Chairman Arnold stated that an individual had not requested to speak in opposition to this administrative regulation.

Senator Kafoglis stated that because there was not a person present at the Subcommittee meeting to speak in opposition to this administrative regulation, he assumed that the industry was in agreement with it.

In response to a question by Representative Allen, Ms. Miller stated that: (1) the Department: (a) needed the \$3 million because: 1. the fees had not been increased since 1982; and 2. with the current budget, the Department was approximately at a break-even point; (b) was allowed to retain \$2.5 million that normally would have been transferred to another state agency; and (c) anticipated an additional increase in the number of agents, appointments, licenses, other activities relating to agents, and company filings to occur this year; (2) because the insurance industry was very competitive, insurance companies wanted the: (a) ability to file new products with the Department; and (b) have the Department act on those rate filings in a timely and efficient manner; and (3) other reasons for the increased fees included: (a) the additional requirements imposed by the: 1. health insurance law from the 1994 and 1996 General Assemblies; and 2. workers' compensation law; (b) the establishment of a new fraud unit, even though the Department received some funding for the unit; (c) many other activities of the Department; and (d) to enable the Department to: 1. meet its obligations; and 2. comply with relevant statutes.

In response to a question by Representative Allen, Ms. Burton stated that: (1) the Department would be hiring additional people, including extra staff: (a) for consumer protection; and (b) to enforce the Insurance Code; and (2) another reason for the fee increase was because the Department had expended a lot of money to update technological equipment, which enabled the Department to: (a) conduct on-site: 1. examinations; and 2. licensing; and (b) meet the filing demands of insurance companies that were constantly changing their technology systems.

Ms. Bryant stated that: (1) part of the increased amount of money was for actuarial services; (2) the Commissioner had testified before the Banking and Insurance Committee about last year's significant increase in the Department's personal service contract needs for actuarial services, which had increased because of changes in laws governing: (a) health insurance; and (b) workers compensation; and (3) while some of the increase was related to the increased demand for actuarial services, the Department would be using service contracts to fulfill its obligations, rather than hiring new staff for actuarial services.

Representative Allen: (1) stated that he wanted the General Assembly to take action on this issue to determine whether the fee increases were needed; and (2) moved that this administrative regulation be found deficient.

Representative Bruce stated that: (1) he wanted the Department's representatives to discuss how the increases would affect the consumer; (2) as chairman of the Banking and Insurance Committee, his biggest complaint about the Department was that more money was needed to investigate: (a) consumer complaints, especially those involving an insurance company that would not pay a claim; and (b) insurance agents who sell insurance without turning the sale into the company; (3) when he has sent constituents to the Department for assistance, the Department's response has not been as quick as he would like because it was understaffed; (4) while the other objectives for the increase were good, the Department needed to do what was best for the public first; and (5) if the increase was intended to help the public, he was supportive of this administrative regulation.

In response to a question by Representative Bruce, Ms. Burton

stated that the Department would use some of the increased money to help the public.

Senator Kafoglis stated that: (1) he agreed with Representative Bruce that: (a) the primary responsibility of the Department was to protect the public; and (b) the Department needed adequate resources to carry out that responsibility; (2) because under the present Commissioner of Insurance, the Department has had the most aggressive effort to protect the public than it has had in a long time, the Subcommittee needed to support the Commissioner and the Department in its continuing efforts to protect the public; and (3) he supported this administrative regulation.

Ms. Burton stated that one of the most important reasons the Commissioner wanted the fees increased was to augment the consumer complaint department.

Senator Pendleton stated that if the Department was going to hire additional people, the Department should hire more people of the same caliber as Ms. Burton because she was to be commended for the fine job she had done in several instances in Western Kentucky.

Senator Roeding stated that (1) he: (a) would second Representative Allen's motion to find this administrative regulation deficient; and (b) commended the Department and Commissioner Nichols for the great job they have done; and (2) the General Assembly should decide whether to add new taxes: (a) because: 1. the \$3 million increase would be passed on to the public; and 2. the fees were the same as taxes, even though the need for the increase existed, and the Department was authorized to establish the fees.

Representative Allen stated that he wanted a roll call vote on his motion.

In response to a question by Senator Kafoglis, Ms. Burton stated that while the Department had statutory authority to establish the fees, she could not cite the specific statutes.

Subcommittee staff stated that: (1) KRS 304.4-010 required the Commissioner to promulgate an administrative regulation that prescribed the: (a) fees; and (b) services for which the fees would be charged; (2) because several sections within KRS Chapter 304 referenced but did not specify the fee required by KRS 304.4-010, there were some inconsistent cross-references in the chapter; (3) the Subcommittee may want the Banking and Insurance Committee to look at the inconsistent cross-references; and (4) the Department did have the statutory authority to promulgate this administrative regulation.

Representative Bruce stated that the Banking and Insurance Committee would have its staff study the cross-references.

In response to questions by Chairman Arnold, Ms. Burton stated that: (1) the fees were in line with the fees charged by other states, particularly the border states; and (2) one of the fees increased was for agent licensing.

In response to questions by Chairman Arnold, Ms. Bryant stated that: (1) after the increase in fees, Kentucky would remain in the medium to low range with other states surrounding Kentucky; (2) because the license was renewed biennially, an agent resident who currently paid \$20 a year for his license was actually paying a two year fee; (3) in other states, the same fee ranged from \$40 to \$80; (4) the Department was raising its fee from \$20 to \$40 a year; and (5) the Department: (a) was adding \$10 to each license; and (b) had not received complaints from agents on the increased fee scale.

In response to a question by Representative Bruce, Ms. Bryant stated that: (1) Tennessee charged \$100 for that license; (2) the surrounding states charged a per year fee; (3) Kentucky's fees were different because its fees were paid every other year; and (4) the fee charged in Kentucky was actually for two years.

Senator Roeding stated that he was concerned that the public be informed of changes in administrative regulations, such as the increase in fees. In response to a question by Senator Roeding, Ms. Burton stated that: (1) the public was informed about the fee increases because the administrative regulation: (a) was published in the Administrative Register; and (b) went through the administrative

process; and (2) the Department: (a) knew people were familiar with the administrative regulation because it received requests for copies of the administrative regulation; and (b) had not received complaints from people who had requested a copy of the administrative regulation.

The Subcommittee did not approve a motion by Representative Allen, seconded by Senator Roeding, to find this administrative regulation deficient.

The Subcommittee approved this administrative regulation with Representative Allen and Senator Roeding voting against approval.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) Section 1(22)(c) was amended to change the fee for a copy of a document on file with the Commissioner from thirty (30) cents a page to fifty (50) cents a page to comply with KRS 304.4-010(1) and KRS 13A.120(2)(i); and (3) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(b).

**Department of Housing, Buildings and Construction: Office of the State Fire Marshall: Boilers and Pressure Vessels**

815 KAR 15:026. Existing boilers and pressure vessels; testing, repairs, inspection and safety factors. Judith Walden, General Counsel, represented the Department. This administrative regulation was amended as follows: (1) the RELATES TO paragraph and Section 3(5) were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (3) Sections 2 through 7 were amended to comply with the (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

**Cabinet for Families and Children: Department for Social Services: Division of Family Services: Day Care**

905 KAR 2:140 & E. Child day care programs. (Emergency Expired 5/20/97) Michael Cheek, Department for Social Services, represented the Cabinet. In response to questions by Representative Bruce, Mr. Cheek stated that: (1) this administrative regulation: (a) required enrollment of unregulated day care providers that were currently providing day care and baby-sitting services for KTEP recipients; and (b) applied to those who keep less than three children, because they are not required to be certified or licensed; (2) while they previously had been permitted to care for children on the recommendation of the parent, the Federal statute now required them to be enrolled with the Cabinet for Families and Children; (3) a person had to be enrolled if: (a) he kept one child; and (b) the State paid funds for it; and (4) the enrollment process required a criminal records check.

This administrative regulation was amended as follows: (1) Sections 1(24) and 2(2)(c) were amended to comply with the formatting requirements of KRS 13A.220(4); (2) Sections 1, 2, and 7 were amended to comply with the drafting requirements of KRS 13A.222(4); and (3) Section 8 was amended to comply with the format for the incorporation by reference of material.

Representative Bruce requested that he be recorded as voting against approval of this administrative regulation.

**Adult Services**

905 KAR 5:080. Certification of assisted living residences. Michael Cheeks, Jerry Whitley, Department for Social Services; Kim Lyon, Kentucky Housing Corporation; Dan Walton, attorney, Ruby Jo Cummins, Director of Regulatory Affairs, Rick Foley, Reimbursement Specialist, Kentucky Association of Health Care Facilities and Nursing Homes; and Laurel True, State Legislative Committee of the American Association of Retired Persons appeared before the Subcommittee.

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Mr. Cheeks stated that: (1) this administrative regulation implemented Senate Bill 162, enacted during the 1996 Regular Session; (2) Senate Bill 162 established a voluntary certification program for assisted living residences; (3) assisted living residences emphasize: (a) personal dignity; (b) autonomy; (c) independence; (d) privacy; and (e) the enhancement of a person's ability to age in a home-like setting as services intensify or diminish depending upon a person's changing needs; (3) this administrative regulation established procedures for: (a) application, renewal, and approval; (b) appeals; (c) physical requirements of a facility; and (d) tenant rights and agreements; and (4) implementation of this administrative regulation would allow the Kentucky Housing Corporation to proceed with its program to: (a) utilize approximately \$20 million in funding set aside for the development of low and moderate income assisted living residences; and (b) increase the housing opportunities and enhance support services for the frail elderly of Kentucky.

In response to questions by Senator Roeding, Ms. Lyon stated that: (1) none of the assisted living facilities will be financed 100% by HUD; (2) at-risk private funds will be available for those who want to build them; (3) the available funds were Kentucky Housing Corporation corporate money rather than HUD funds; (4) a developer is required to have some equity in a project: (a) usually 20%; and (b) often, 15%; (5) funding sources in addition to KHC, HUD, and developer equity funds are required for the development of a project; (6) while other federal money may be available, typically, a partnership is necessary to bring together the required funding.

Senator Roeding stated that: (1) his questions relating to developer equity were prompted by the fact that throughout the country, many of these residences went under, and are empty, at taxpayer expense, because there were not at-risk private funds available for their development; and (2) while assisted living residences were needed: (a) he hoped this situation would be looked into; (b) he wanted to prevent the failure of assisted living residence developments at taxpayer expense; and (b) the way to prevent such failure would be to ensure the availability of private at-risk funds.

Ms. Lyon stated that: (1) applicants were held to very strict underwriting requirements by the Kentucky Housing Corporation and HUD; and (2) HUD was the insurer of assisted living residence projects.

Mr. Walton stated that the: (1) primary question was the ability of the Cabinet to interpret the description and definition of assisted living to permit the performance of activities related to daily living; (2) statute did not clearly permit the performance of all five activities listed in this administrative regulation for one person; and (3) performance of all five activities: (a) establishes the person for whom they were performed as a very sick person; and (b) transcended the definition of assisted living.

Ms. Cummins stated that: (1) the Association: (a) had worked closely with the Kentucky Housing Corporation during the 1996 Regular Session to ensure the passage of assisted living legislation; and (b) supported the legislation enacted by the 1996 General Assembly; (2) during the 1996 Regular Session, the Cabinet: (a) demanded that the definition of assisted living in the statute be tightly defined; and (b) succeeded, almost to the point of defeating the enactment of legislation relating to assisted living residences, in ensuring that changes were made to Senate Bill 162 to prohibit any resemblance between an assisted living residence and a licensed health service; (3) the Association had a vested interest in assisted living, because much of the expansion in this segment of the long-term care market in Kentucky will occur through nursing home providers; (4) while some nursing home providers would prefer uninhibited growth and very limited regulation of assisted living, the Association believed that sections of this administrative regulation exceed the scope of KRS 209.200 in the establishment of the scope of services that may be provided; (4) KRS 209.200 provides that supportive services means: (a) assistance with household chores; (b)

cleaning; (c) shopping; (d) meals; (e) laundry; (f) transportation; (g) 24 hour supervision; and (h) organized social and recreational activities; (5) KRS 209.200 provides that other services, including but not limited to assistance with health related services, may be arranged through a licensed or Cabinet-approved health service provider; (6) this administrative regulation significantly exceeds the limitations established by KRS 209.200 by allowing the service package to include assistance with: (a) eating; (b) dressing; (c) bathing; (d) transferring; and (e) toileting; (7) contrary to the intent of the General Assembly, the inclusion of these items shifts the assisted living concept from a social model to a medical model; (8) this administrative regulation cannot allow the provision of health services that, pursuant to KRS Chapters 216 and 216B, are to be provided by licensed health care facilities established pursuant to, and governed by KRS Chapters 216 and 216B; (9) Subcommittee members should keep in mind the Cabinets for Health Services and Families and Children "Care 2000 Project" that is: (a) comprised of 100 constituents state-wide; and (b) studying ways to re-design Kentucky's health care delivery system; (10) this administrative regulation has the effect of violating Certificate Of Need laws by sanctioning another level of care not permitted by statute; (11) in light of "Care 2000", the industry will continue to offer services to the Cabinet and legislators to review assisted living statutes; (12) a recent survey of Kentucky long-term care decision-makers: (a) was conducted by the American Health Care Association's Marketing Partnership; (b) advised the state that only 15 per cent of respondents agreed that they would be comfortable having a loved one cared for in a residential care facility that, while less restrictive than a nursing home, was: 1. not licensed by the state; or 2. not required by the state to meet the quality of care standards imposed on nursing homes; and (c) showed that 81 per cent of respondents agreed that if a loved one needed 24 hour care outside the home that was too significant for an assisted living facility, they would be comfortable with seeking placement of the loved one in a nursing home; and (13) suggested that daily living activities are not, and should remain, are: (a) unspecified in assisted living legislation; and (b) should not be specified in this administrative regulation.

Representative Lee stated that: (1) the provisions of this statute were unclear or silent on some of the subject matter relating to this administrative regulation; (2) although the agency had the statutory authority to promulgate this administrative regulation, this, as well as other statutes that were unclear, required or were subject to various interpretations should be clarified; and (3) the Subcommittee should request LRC to refer the issues raised by this administrative regulation relating to the types of services and vague or confusing requirements to the appropriate legislative subcommittee for recommendations to the 1998 General Assembly.

With regard to the five activities this administrative regulation adds to the service package, Senator Roeding stated that: (1) based upon the experience of his 87 year old father-in-law and 91 year old mother, the services provided to those in assisted living residences were not medical services that should be, or were restricted to, nursing homes; (2) if an assisted living facility had not been an option for the daily provision of one or more of the five services, one would have had to be placed in a rest home; (3) assisted living facilities are required to offer the appropriate type of service or care and not to restrict options available; and (5) if there is a gray area in the statute, the General Assembly could clarify the statute.

Mr. Walton stated that if: (1) a person needed assistance with all of the five activities, or needed to have the activities performed for them, the person would: (a) be a very sick person; and (b) transcend the social model, helping people to exist on their own, and become a medical model; and (2) this administrative regulation was amended to clearly provide a distinction in the type of activities that are appropriate for the models, it would address the objections raised by the Association.

Senator Roeding stated that: (1) if a person needed to be

provided with all these services every day, he was certain the assisted living facility would inform the patient that it could not provide such services every day; and (2) while a patient, one who has an infection for example, might need these services daily for a while, the patient would not need a rest home for the short period during which the services were needed on a daily basis.

Mr. Walton stated that this situation would be clear if this administrative regulation included such language. Senator Roeding stated that such an issue could be handled at the next Regular Session.

Mr. True stated that: (1) he urged the Subcommittee to approve this administrative regulation; (2) this administrative regulation offered older people an option in addition to the options of home, or personal care homes, or nursing homes that was not currently available; (3) he agreed with Senator Roeding that this type of service should be made available in Kentucky; (4) the issue during the last Regular Session was: (a) never over the type of daily activities; and (b) related to reimbursement; and (5) the reimbursement issue was worked out with the Nursing Home Association in the development of the legislation.

Senator Kafoglis: (1) stated that if the Subcommittee approved this administrative regulation, it would be reviewed by the Interim Joint Committee on Health and Welfare; and (2) asked why a motion to refer the issues raised by this administrative regulation was necessary.

Representative Lee stated that: (1) even though it was up to the appropriate legislative subcommittee to determine whether it would make recommendations to the 1998 General Assembly, such a motion was required to request consideration of the issues for recommendations to the 1998 General Assembly; and (2) the concerns of the Subcommittee over the lack of clarity of the statute required the Subcommittee to clearly inform the appropriate legislative subcommittee to ensure it was informed and would consider the issue for recommendations and action at the next Regular Session.

Chairman Arnold stated that: (1) he thought it was necessary that the Subcommittee notified the appropriate legislative subcommittee; and (2) such notification was one of the duties imposed upon the Subcommittee by KRS Chapter 13A.

In response to a question by Chairman Arnold, Subcommittee staff stated that: (1) KRS Chapter 13A provided that the Subcommittee was authorized to make recommendations relating to: (a) the amendment or repeal of statutes; (b) whether administrative regulations were needed; and (c) whether new legislation was required; and (2) the request to LRC to refer the issues was separate from the referral by LRC of the administrative regulation for review after the Subcommittee's review.

Representative Lee stated that he: (1) agreed with Representative Bruce's statement that the referral of the issues did not bind the legislative subcommittee to which the issues were referred to take any action; and (2) was certain that if the legislative subcommittee to which the issues were referred took no action, those who appeared before the Subcommittee would find a legislator to introduce legislation relating to the issues raised by this administrative regulation.

The Subcommittee approved: (1) this administrative regulation as amended; and (2) Representative Lee's motion that LRC be requested to refer the issues raised by this administrative regulation, including clarification by statute of what services may be provided by assisted living residences, to the appropriate legislative subcommittee for recommendations to the next General Assembly.

#### **Division of Aging Services: Aging Services**

905 KAR 8:160. Adult Day and Alzheimer's Respite Program. This administrative regulation was amended as follows: (1) The NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to delete a provision that repeated KRS 13A.221, pursuant to KRS 13A.120(2)(e); (2) Sections 1, 2, and 7 were amended to comply with the formatting requirements of KRS 13A.220(4); and (3) Sections 5, and 7 were amended to comply with the drafting requirements of KRS 13A.222(4).

905 KAR 8:180. Homecare Program for the Elderly. Section 10 was amended to comply with the formatting requirements for the incorporation by reference of material.

**Cabinet for Health Services: Department for Medicaid Services: Division of Administration and Development**

907 KAR 1:013 & E. Payments for hospital inpatient services. Karen Doyle represented the Department. This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (3) Sections 1, 3, and 7 through 15 were amended to comply with the (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

907 KAR 1:028. Other laboratory and x-ray services. Duane Dringenburg, Division Director, represented the Department. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; and (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 were amended to comply with the (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

907 KAR 1:038 & E. Hearing and vision program services. This administrative regulation were amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; and (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, and 3 were amended to comply with the (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

907 KAR 1:405. Repeal of 907 KAR 1:404. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; and (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to: (a) state the reason 907 KAR 1:404 was being repealed, as required by KRS 13A.310(3)(a), and (b) comply with the: 1. format requirements of KRS 13A.220(4); and 2. drafting requirements of KRS 13A.222(4).

907 KAR 1:631 & E. Reimbursement of vision program services. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; and (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 6 were amended to comply with the (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

**The Subcommittee determined that the following administrative regulations complied with statutory requirements:**

**Department of Fish and Wildlife Resources: Game**

301 KAR 2:140. Seasons for wild turkey. Tom Bennett, Commissioner, and John Phillips represented the Department. In response to a question by Representative Allen, Mr. Bennett stated that the Department had: (1) not proposed increasing the limits for hunting: (a) raccoon; (b) opossum; or (c) skunks; (2) extended the period of some of the hunting seasons; (3) increased the number of deer that may be taken in fifty-three (53) counties; and (4) not received information on an overpopulation of raccoons. Mr. Bennet stated that the Department would review the issue of overpopulation of these animals.

301 KAR 2:172. Deer hunting seasons and requirements.

301 KAR 2:174. Deer hunting zones.

301 KAR 2:251. Hunting and trapping seasons and limits for furbearers and small game.

**Hunting and Fishing**

301 KAR 3:030. Year-round season for some birds and animals.

**Transportation Cabinet: Department of Highways: Division of Right of Way and Utilities: Division of Aeronautics: Property Acquisition and Uniform Relocation**

600 KAR 3:010. Relocation assistance payments of the Transportation Cabinet. Sandra Pullen Davis, Assistant to the Secretary, represented the Cabinet. In response to a question by Representative Bruce, Ms. Davis stated that: (1) the proposed amendment to this administrative regulation increased the amount the Cabinet paid to someone who was being moved because of a taking of the person's property; (2) if the Cabinet used a lump sum payment process, people frequently did not agree with the amount the Cabinet paid them; (3) the Cabinet was increasing the amount it paid because it: (a) had not done so in several years; and (b) was granted approval from the Federal Highway Administration; (4) was actually paying more than most of the surrounding states.

In response to a question by Senator Pendleton, Ms. Davis stated that: (1) the increase was: (a) based upon the number of rooms in a residence; and (b) not based on the number of people in a family; (2) there were several different ways to pay for a move; and (3) this administrative regulation related to the physical move of a family from one residence to another.

Senator Pendleton stated that: (1) he was aware of some instances where people moved into homes knowing that: (a) the house was going to be moved; and (b) they would receive relocation moneys; (2) while some of the people were renting, they had never paid the rent to the owner; (3) the Cabinet needed to exercise a lot of oversight in this area, because he knew of two examples on the 68-80 project where the: (a) state was getting ready to present a check for the move; and (b) owner requested that he be paid his rent before his tenants received the check; (4) he supported this for families and people whose property was being taken; and (5) some oversight was needed to prevent people from deliberately taking advantage of this system.

Ms. Davis stated that (1) she would pass his suggestion along; (2) did not see how the Cabinet could deal with this type of problem at the moment; and (3) if there were a method to deal with this situation, the Cabinet would use it.

In response to a statement by Representative Bruce, Ms. Davis stated that she did not think the Federal government would permit the Cabinet require that all rents be paid before the renter was paid for a move.

**Department of Vehicle Regulation: Division of Motor Vehicle Enforcement: Division of Motor Carriers**

601 KAR 1:025. Transporting hazardous materials by air or highway.

**Education Professional Standards Board**

704 KAR 20:045. Recency and certification fees.

704 KAR 20:060. Renewals.

704 KAR 20:070. Certification for teaching in the secondary grades.

704 KAR 20:290. Certification for elementary grades.

**Department of Housing, Buildings and Construction: Plumbing**

815 KAR 20:020. Parts or materials list. Judith Walden, General Counsel, represented the Department.

815 KAR 20:070. Plumbing fixtures.

815 KAR 20:090. Soil, waste and vent systems.

**Cabinet for Health Services: Department for Mental Health and Mental Retardation Services: Mental Health**

908 KAR 2:060. Mental health and mental retardation manuals for funding instructions, program policies and standards, and reimbursement guidelines. Mike Littlefield, Administrative Regulations Coordinator, represented the Department.

The following administrative regulations were deferred to the next Subcommittee meeting upon agreement by the Subcommittee and the promulgating agency:

**Legislative Research Commission: Capital Planning Advisory Board**

1 KAR 6:020. Policies and procedures.

**Department of Law: Division of Consumer Protection**

40 KAR 2:250. Filing of annual reports by cemeteries.

40 KAR 2:260. Filing of annual reports by preneed burial licensees.

**Medical Examination of Sexual Abuse Victims**

40 KAR 3:010. Payment schedule to hospitals, physicians and sexual assault nurse examiners for medical examinations of victims of sexual offenses.

**Personnel Cabinet: Department of Personnel, Unclassified**

101 KAR 3:045E. Compensation plan and compensation incentive systems.

**Department for Military Affairs: Emergency Response Commission: Disaster and Emergency Services**

106 KAR 1:091E. Kentucky Emergency Response Commission fee account grant requirements for local emergency planning committees.

**Board of Pharmacy**

201 KAR 2:225. Special pharmacy permit-medical gasses.

**Real Estate Commission**

201 KAR 11:400. Agency disclosure requirements.

**Department of Agriculture: Division of Markets: Organic Agricultural Product Certification**

302 KAR 40:010. Standard organic agricultural product requirements.

**Justice Cabinet: Department of Corrections: Office of the Secretary**

501 KAR 6:020. Corrections policies and procedures.

501 KAR 6:130. Western Kentucky Correctional Complex.

**Department of Juvenile Justice: Child Welfare**

505 KAR 1:020E. Internal grievance procedure.

505 KAR 1:030E. DJJ policy and procedures manual.

**Workforce Development Cabinet: Department for Adult and Technical Education: Personnel System for Certified and Equivalent Employees**

780 KAR 3:070. Attendance, compensatory time, and leave.

780 KAR 3:080. Extent and duration of school term, use of school days and extended employment.

**Unclassified Personnel Administrative Regulations**

780 KAR 6:060. Attendance, compensatory time, and leave.

**Labor Cabinet: Department of Workplace Standards: Division of Occupational Safety and Health Compliance: Division of Occupational Safety and Health Education and Training**

803 KAR 2:301 & E. Adoption and extension of established federal standards.

803 KAR 2:306 & E. Occupational health and environmental control.

803 KAR 2:308 & E. Personal protective equipment.

803 KAR 2:320 & E. Air contaminants.

803 KAR 2:402 & E. General safety and health provisions.

803 KAR 2:403 & E. Occupational health and environmental controls.

803 KAR 2:404 & E. Personal protective and life saving equipment.

803 KAR 2:405 & E. Fire protection and prevention.

803 KAR 2:410 & E. Electrical.

803 KAR 2:411 & E. Scaffolds.

803 KAR 2:424 & E. Diving.

803 KAR 2:425 & E. Toxic and hazardous substances.

803 KAR 2:500 & E. Maritime employment.

803 KAR 2:900E. Repeal of 803 KAR 2:302.

**Department of Workers Claims: Workers' Claims**

803 KAR 25:010 & E. Procedure for adjustments of claims.

803 KAR 25:200 & E. Workers' compensation notice.

803 KAR 25:210 & E. Affidavit of exemption from KRS Chapter 342.

803 KAR 25:220 & E. Guaranty funds.

803 KAR 25:230 & E. Employee leasing.

**Department of Insurance: Rates and Rating Organizations**

806 KAR 13:130E. Experience modification factors for workers' compensation insurers.

806 KAR 13:140E. Notice of right to seek review of application of workers' compensation insurance rates.

**Health Maintenance Organizations**

806 KAR 38:090E. Open enrollment.

**Public Service Commission: Utilities**

807 KAR 5:063. Filing requirements and procedures for proposals to construct telecommunications antenna towers. Deborah Eversole, General Counsel; Jeff Johnson, Engineering; Wayne Bates, Engineering Division; and Tom Dorman represented the Commission. Tom Fitzgerald; Kentucky Resources Council; and Paul Witty and Jack Ruf, Louisville Jefferson County Planning Committee, spoke in opposition to the administrative regulation. Mr. Witty and Mr. Ruf submitted a written copy of two proposed amendments to this administrative regulation. Lawrence Hester, BellSouth Mobility, spoke with regard to the deferral of this administrative regulation.

Ms. Eversole stated that: (1) this administrative regulation concerned the placement of cellular towers and monopolies, which was a very difficult and controversial issue; (2) state and federal law required cellular service to be adequate; (3) neighbors tended to oppose building a tower near their property; (4) until 1996, cellular towers and monopolies were: (a) treated like other utility facilities; and (b) exempt from review by local planning commissions under KRS 100.324; (5) during the 1996 Regular Session, the General Assembly: (a) amended KRS 100.324; and (b) created KRS 278.650; (6) that legislation created a limited exemption from the exemption for cellular sites that were built in a county containing a city of the first class, which only applied to Jefferson County; (7) Jefferson County now had two separate proceedings established by statute; (8) the first proceeding was before the Jefferson County Planning and Zoning Commission, which had 60 days to decide to reject or accept a proposed site; (9) after the end of this 60 day period, the Planning and Zoning Commission could: (a) approve the site, which would mean the utility would apply to the Public Service Commission for a certificate of public convenience and necessity; (b) not take any action within the 60 day period, which would mean the site would be deemed approved; or (c) reject the site, which would mean the utility could request the Public Service Commission to: 1. override the decision of the Planning and Zoning Commission; and 2. grant a certificate of public convenience and necessity despite the rejection, if: a. the construction was required; and b. a suitable alternative site did not exist; (10) the nature of cellular communications required building a tower within specified search areas; (11) if the local Planning and Zoning Commission rejected a proposal, the Public Service Commission required evidence from the utility that it could not lease or build a facility in a different place within the affected search area; (12) the administrative regulation governed those three

situations; (13) the Public Service Commission: (a) was authorized to consider local concerns, including those of nearby property owners, in all areas outside the county containing a city of the first class; (b) required significant notice in those counties, including having the notice: 1. posted on the a. site; and b. nearest public access road; and 2. mailed to each property owner within 500 feet of the proposed location; and (c) was prohibited by statute from requiring the same notice provisions in Jefferson County; and (14) two separate jurisdictional spheres existed in Jefferson County: (a) the Jefferson County Planning and Zoning Commission was required to consider and dispose of local concerns; (b) if the Jefferson County Planning and Zoning Commission determined a site was not suitable for a tower, the Public Service Commission: 1. was prohibited from reversing the determination that the site was unsuitable; and 2. could determine whether the tower was required in the unsuitable location in order to provide necessary service.

In response to questions by Representative Lee, Ms. Eversole stated that: (1) an administrative regulation: (a) had not previously been promulgated to govern cellular sites specifically; and (b) that governed the general construction of a utility facility did not require notice; (2) currently, the Public Service Commission: (a) informally required the utility to post a notice at the location where the utility planned to build; and (b) did not have an existing administrative regulation that required this notice; (3) this administrative regulation: (a) contained the same notice requirements that the Public Service Commission had informally required; and (b) required the utility to: 1. state that the Public Service Commission would have a public hearing on the proposal by: a. posting a two foot by four foot notice, which was larger than the informally required notice, on-site and on the nearest access road; and b. mailing a notice to every property owner within 500 feet; 2. notify the local planning and zoning commission of the proposal; and 3. place a notice in the newspaper; (4) because she had not seen the initial staff review, she was unable to answer a question regarding a statement it contained; (5) if this administrative regulation became effective, each county of Kentucky, except Jefferson County, would be required to have notice: (a) on-site; (b) on the nearest road; (c) mailed to each person within 500 feet; (d) sent to the local planning and zoning commission, or county judge executive, if there was not a commission; and (e) published in the newspaper; and (6) the notice requirements did not apply to Jefferson County because the Public Service Commission assumed the local planning and zoning commission in Jefferson County would handle the local concerns.

In response to questions by Subcommittee members, Subcommittee staff: (1) clarified the statements in the initial review relating to the public notice requirements; and (2) stated that: (a) Section 1 of this administrative regulation: 1. established the requirements for a cellular tower located outside of Jefferson County; and 2. contained, for example, requirements numbered 1 through 24; and (b) Section 2 of this administrative regulation: 1. established the requirements for a cellular tower in Jefferson County; 2. did not contain the public notice requirements; and 3. contained, for example, requirements numbered 1 through 19.

In response to questions by Representative Lee, Ms. Eversole stated that: (1) the only difference between the informal requirements and the requirements of this administrative regulation was that the notice requirements were reduced in this administrative regulation; (2) the original administrative regulation promulgated by the Commission required notice to all property owners and residents within 500 feet; and (3) after cellular company representatives testified at the public hearing that giving notice to renters was difficult because their names were not listed in the property offices, the Commission amended the administrative regulation to require notice to all property owners within 500 feet.

In response to a question by Representative Lee, Subcommittee staff stated that the second page of the initial staff review stated that KRS 278.650 provided that: (1) a local planning commission in a

county with a city of the first class was authorized to review and act on a proposed cellular tower before the proposal was reviewed by the Public Service Commission; and (2) the Public Service Commission was authorized to consider land use issues when the Commission reviewed a proposed tower in an area that did not have a local planning commission.

In response to questions by Representative Lee, Ms. Eversole stated that: (1) except for Jefferson County, this administrative regulation required: (a) the notice be posted: 1. in the newspaper of the largest circulation in the area in which the facility was proposed; 2. on the signs; 3. in a written notice to people who lived within 500 feet of the proposed site; and (b) a public hearing at the Commission; (2) she did not think it was within the authority of the Commission to require a hearing at the local level in Hardin County; (3) KRS 278.650 specifically provided that in areas of the state outside Jefferson County, the Commission was authorized to consider the: (a) character of the general area; and (b) effects on near-by property values; (4) the Commission rejected a proposed site in Shelby County three or four weeks ago because it appeared there was a less obtrusive alternative site available; (5) because the Public Service Commission was required to notify the local planning commission if there was a hearing, this administrative regulation required the utility to notify the local planning and zoning commission when the utility filed with the Public Service Commission; (6) the Commission frequently had intervenor planning and zoning; (7) the local planning and zoning commission was not statutorily authorized to: (a) conduct a hearing; or (b) discuss the placement of cellular towers; (8) except for the caveat for renters, Representative Lee's constituents in Hardin County would be notified under the same processes that had been in effect under the informal requirements; and (9) comments at the public hearing indicated that at least twice a cellular company was unable to get the names of people who lived in an apartment from the apartment manager because of privacy concerns.

In response to a question by Senator Kafoglis, Subcommittee staff stated that: (1) the initial staff review: (a) summarized the requirements for: 1. Section 1, which established the requirements for every county except for Jefferson County; and 2. Section 2, which established the requirements for counties with a first class city, which was Jefferson County; and (b) intended to state that the public notice requirements that applied to all counties except Jefferson County did not apply to Jefferson County, because it had its own public service commission requirements; and (2) the guidelines were still in place in Section 1 for every county other than Jefferson County.

Mr. Fitzgerald stated that: (1) the Kentucky Resources Council believed two amendments were needed for this administrative regulation; (2) while in most counties notice was required for adjoining property owners within 500 feet, the Council had suggested that the first tier landowners, which consisted of all adjacent landowners, receive written notice because: (a) that was the requirement under many local planning and zoning commissions; and (b) property owners who did not subscribe to the Courier Journal or the Herald-Leader would not be notified about the proposal unless they trespassed on the site to see the notice; (3) in Jefferson County, the Council had suggested an amendment to this administrative regulation to provide notice after the local planning and zoning process, because adjoining landowners in Jefferson County: (a) were not notified of filings with the Public Service Commission in Frankfort; and (b) had an interest in the Public Service Commission proceedings to address the issues of: 1. safety; and 2. necessity; (4) while the assumption was that the Jefferson County Planning Commission required the notice, the local commission was not informed that a filing was made with the Public Service Commission; (5) the Kentucky Resources Council: (a) had suggested that all counties require: 1. the first tier landowners be notified; 2. newspaper notification; and 3. notification of the filing in Frankfort at the time of filing; and (b) wanted the amendments because the separate process in Jefferson County for zoning and planning did not have a direct bearing on the Public

Service Commission's review of the certificate of public convenience and necessity; and (6) he had asked the agency to reconsider amending this administrative regulation, because amendments were necessary to ensure that all adjoining landowners had: (a) their safety interests addressed; and (b) a change to exercise their right to participate in the public hearing.

Mr. Whitty stated that: (1) the legislation was ambiguous in defining the respective roles of the: (a) local planning unit, which was primarily concerned with the appropriateness of the proposed land use; and (b) Public Service Commission, which determined the adequacy of the service in the public interest; (2) the language in the statute that the Public Service Commission would override a decision of the planning committee was unfortunate because the process was not an: (a) appeal; or (b) override; (3) the statute required the local planning unit to inform the Public Service Commission of its consideration of land use issues; and (4) the Louisville Jefferson County Planning Committee supported the notice proposal submitted by the Kentucky Resources Council because: (a) the Public Service Commission ultimately made the final decision on a proposal; (b) it was important that affected people have notice of: 1. the identity of the final decision maker; 2. when the decision would be made; and 3. the process for making that decision; and (c) the people who lived in the area around a proposed tower site would best suited to testify on the acceptability of alternative sites.

Mr. Ruf stated that: (1) Subcommittee members had received a copy of the two proposed amendments; and (2) because the relationship between the planning commission and the Public Service Commission was new, the Louisville Jefferson County Planning Committee was new at the administrative regulation process and would have preferred discussing the amendments with the Public Service Commission earlier.

Chairman Arnold stated that Mr. Ruf had two choices: (1) a Subcommittee member could propose the amendments for him; or (2) if he gave a brief overview of the amendments, consideration of this administrative regulation could be deferred until the July 8 meeting.

Mr. Ruf stated that: (1) he wanted to give the Subcommittee a brief overview; (2) the Louisville Jefferson County Planning Committee had: (a) encountered circumstances where a utility has misrepresented to the Public Service Commission that the local filing had occurred; (b) no idea as to the identity of potential applicants because the industry was exploding; and (c) wanted the administrative regulation amended to: 1. require that the local planning commission receive notice of a filing with the Public Service Commission; 2. clarify when a submission occurred; and 3. require notice be sent to each person who appeared before the Jefferson County Planning Commission, which was similar to a rezoning requirement; and (3) under a rezoning requirement, the legislative body who made the final decision was required to send notification of when the action was scheduled for consideration to: (a) the planning commission; and (b) each person who: 1. testified at the planning commission hearing; or 2. submitted written testimony.

In response to a question by Chairman Arnold, Ms. Eversole stated that she did not anticipate the Commission would have a problem with the amendments, but wanted to work on the language.

Mr. Dorman stated that the Commission would request deferral of this administrative regulation to: (1) work out the amendments; (2) bring them back to the Subcommittee at its July 8 meeting; and (3) clarify the issue of notification in other counties.

Mr. Hester stated that members of the industry should be included in discussions between the Public Service Commission and the Louisville Jefferson County Planning Commission regarding the administrative regulation.

Chairman Arnold stated that notification of interested parties would be effected by publication in the newspaper.

The Subcommittee approved a motion to defer consideration of this administrative regulation to its July meeting.

**Department of Financial Institutions: Securities**

808 KAR 10:225. Procedural regulation governing hearing and hearing related procedures for matters before the Department of Financial Institutions.

**Kentucky Racing Commission: Harness Racing**

811 KAR 1:090E. Stimulants and drugs.

**Cabinet for Health Services: Long-Term Care**

900 KAR 2:060. Hearings concerning transfer and discharge rights.

**Certificate of Need**

900 KAR 6:015E. Certificate of need matters.

**Department for Public Health: State Health Plan**

902 KAR 17:035E. State health plan for facilities and services.

**Controlled Substances**

902 KAR 55:015. Schedule I substances.

902 KAR 55:090. Exempt anabolic steroid products.

**Radiology**

902 KAR 100:040. General provisions for specific licenses.

**Cabinet for Families and Children: Department for Social Insurance: Division of Management and Development: Public Assistance**

904 KAR 2:015E. Supplemental programs for persons who are aged, blind, or have a disability.

904 KAR 2:017E. Kentucky Works supportive services.

904 KAR 2:370E. Technical requirements for Kentucky Works.

**Food Stamp Program**

904 KAR 3:010E. Definitions.

904 KAR 3:020E. Financial requirements.

904 KAR 3:042E. Food Stamp Employment and Training Program.

**Department for Social Services: Division of Family Services: Child Welfare**

905 KAR 1:180E. DSS policy and procedures manual.

**Cabinet for Health Services: Department for Medicaid Services: Division of Administration and Development**

907 KAR 1:022E. Nursing facility and intermediate care facility for the mentally retarded services.

907 KAR 1:025E. Payments for nursing facility and intermediate care facility for the mentally retarded services.

907 KAR 1:160E. Home and community based waiver services.

907 KAR 1:170E. Payments for home and community based waiver services.

907 KAR 1:645. Resource standards for Medicaid.

907 KAR 1:655. Spousal impoverishment and nursing facility requirements for Medicaid.

907 KAR 1:665. Special income requirements for alternative intermediate services for individuals with mental retardation (AIS-MR), hospice, and home and community based services (HCBS).

907 KAR 1:720E. Coverage and payments for the Kentucky Early Intervention Program services provided through an agreement with the state Title V agency.

**Department for Mental Health and Mental Retardation Services: Mental Health**

908 KAR 2:200E. Coverage and payment for Kentucky Early Intervention Program services.

**The Subcommittee adjourned at 1:25 p.m. until July 8, 1997 at 10 a.m. in Room 149 of the State Capitol Annex.**

OTHER COMMITTEE REPORTS

**COMPILER'S NOTE:** In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

**INTERIM JOINT COMMITTEE ON  
BANKING AND INSURANCE  
Meeting of May 20, 1997**

The following administrative regulation was approved by the Interim Joint Committee on Banking and Insurance during its meeting of May 20, 1997, having been referred to the Committee on May 14, 1997, pursuant to KRS 13A.290(6):  
806 KAR 18:080

Committee activity in regard to review of the above-referenced administrative regulation is reflected in the minutes of the May 20, 1997 meeting, which are hereby incorporated by reference.

**INTERIM JOINT COMMITTEE ON TRANSPORTATION  
Meeting of June 2, 1997**

The following administrative regulations were available for consideration by the Interim Joint Committee on Transportation during its meeting of June 2, 1997, having been referred to the Committee on May 16, 1997, pursuant to KRS 13A.290(6):

600 KAR 1:120  
600 KAR 5:010  
601 KAR 9:140  
602 KAR 15:010  
603 KAR 4:035

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300: None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the June 2, 1997 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON  
LICENSING AND OCCUPATIONS  
Meeting of June 13, 1997**

The following administrative regulations were available for consideration by the Interim Joint Committee on Licensing and Occupations during its meeting of June 13, 1997 having been referred to the Committee on May 13, 1997, pursuant to KRS 13A.290(6):

201 KAR 18:210  
201 KAR 30:040

201 KAR 30:070  
201 KAR 30:081

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): none

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: none

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum,

The following administrative regulations were deferred pursuant to KRS 13A.300: none

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the June 13, 1997 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

# ADMINISTRATIVE REGISTER - A1

## CUMULATIVE SUPPLEMENT

### Locator Index - Effective Dates ..... A2

The Locator Index lists all administrative regulations published in VOLUME 24 of the Administrative Register from July, 1997 through June, 1998. It also lists the page number on which each administrative regulation is published, the effective date of the administrative regulation after it has completed the review process, and other action which may affect the administrative regulation. NOTE: The administrative regulations listed under VOLUME 23 are those administrative regulations that were originally published in Volume 23 (last year's) issues of the Administrative Register but had not yet gone into effect when the 1997 bound Volumes were published.

### KRS Index ..... A8

The KRS Index is a cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each administrative regulation submitted for publication in VOLUME 24 of the Administrative Register.

### Subject Index ..... A10

The Subject Index is a general index of administrative regulations published in VOLUME 24 of the Administrative Register, and is mainly broken down by agency.

# ADMINISTRATIVE REGISTER - A2

## LOCATOR INDEX - EFFECTIVE DATES

| Regulation<br>Number | 23 Ky.R<br>Page No. | Effective<br>Date | Regulation<br>Number | 23 Ky.R<br>Page No. | Effective<br>Date |
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### VOLUME 23

The administrative regulations listed under VOLUME 23 are those administrative regulations that were originally published in Volume 23 (last year's) issues of the Administrative Register but had not yet gone into effect when the 1997 bound Volumes were published.

**EMERGENCY ADMINISTRATIVE REGULATIONS:** (Note: Emergency regulations expire 170 days from publication, or 170 days from publication plus number of days of requested extensions, or upon replacement or repeal, whichever occurs first)

|                 |      |          |
|-----------------|------|----------|
| 101 KAR 3:045E  | 3533 | 2-28-97  |
| 106 KAR 1:091E  | 3709 | 3-31-97  |
| 200 KAR 6:050E  | 3207 | 1-15-97  |
| 401 KAR 8:030E  | 1888 | 10-7-96  |
| 501 KAR 8:010E  | 3536 | 3-14-97  |
| 505 KAR 1:020E  | 3208 | 2-14-97  |
| 505 KAR 1:030E  | 3713 | 3-25-97  |
| 787 KAR 1:210E  | 3540 | 3-3-97   |
| 803 KAR 2:301E  | 3210 | 2-6-97   |
| 803 KAR 2:306E  | 3211 | 2-6-97   |
| 803 KAR 2:308E  | 3214 | 2-6-97   |
| 803 KAR 2:320E  | 3217 | 2-14-97  |
| 803 KAR 2:402E  | 3223 | 2-6-97   |
| 803 KAR 2:403E  | 3224 | 2-6-97   |
| 803 KAR 2:404E  | 3226 | 2-6-97   |
| 803 KAR 2:405E  | 3231 | 2-6-97   |
| 803 KAR 2:410E  | 3232 | 2-6-97   |
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| 803 KAR 2:425E  | 3237 | 2-6-97   |
| 803 KAR 2:500E  | 3240 | 2-6-97   |
| 803 KAR 2:900E  | 3243 | 2-14-97  |
| 803 KAR 25:010E | 3245 | 2-11-97  |
| 803 KAR 25:200E | 3257 | 2-11-97  |
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| 803 KAR 25:220E | 3259 | 2-11-97  |
| 803 KAR 25:230E | 3261 | 2-11-97  |
| 806 KAR 13:130E | 3714 | 3-24-97  |
| 806 KAR 13:140E | 3715 | 3-24-97  |
| 806 KAR 18:080E | 2443 | 11-15-96 |
| Replaced        | 4130 | 5-20-97  |
| 806 KAR 38:090E | 3541 | 3-11-97  |
| 811 KAR 1:090E  | 3717 | 4-15-97  |
| 900 KAR 6:015E  | 2954 | 12-18-96 |
| 902 KAR 17:035E | 2961 | 12-18-96 |
| 902 KAR 47:080E | 1903 | 10-1-96  |
| Expired         |      | 4-20-97  |
| 902 KAR 47:090E | 1907 | 10-1-96  |
| Expired         |      | 4-20-97  |
| 902 KAR 47:100E | 1911 | 10-1-96  |
| Expired         |      | 4-20-97  |
| 904 KAR 2:006E  | 4079 | 4-30-97  |
| 904 KAR 2:015E  | 3271 | 1-31-97  |
| 904 KAR 2:016E  | 4088 | 4-30-97  |
| 904 KAR 2:017E  | 3719 | 3-27-97  |
| 904 KAR 2:370E  | 3728 | 3-27-97  |
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| Expired         |      | 5-25-97  |
| 904 KAR 3:010E  | 3285 | 1-31-97  |
| 904 KAR 3:020E  | 3542 | 2-27-97  |
| 904 KAR 3:025E  | 2700 | 11-27-96 |
| Replaced        | 4158 | 6-16-97  |

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| 904 KAR 3:042E | 3548 | 2-27-97  |
| 905 KAR 1:180E | 3735 | 3-19-97  |
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| 907 KAR 1:013E | 2962 | 12-18-96 |
| 907 KAR 1:022E | 3294 | 1-17-97  |
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| 907 KAR 1:038E | 3306 | 1-17-97  |
| 907 KAR 1:160E | 3736 | 4-15-97  |
| 907 KAR 1:170E | 3739 | 4-15-97  |
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| 908 KAR 2:100E | 1554 | 9-13-96  |
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| 908 KAR 2:110E | 1556 | 9-13-96  |
| Expired        |      | 4-4-97   |
| 908 KAR 2:120E | 1560 | 9-13-96  |
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| 908 KAR 2:130E | 1563 | 9-13-96  |
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| 908 KAR 2:140E | 1566 | 9-13-96  |
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| 908 KAR 2:150E | 1569 | 9-13-96  |
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| 908 KAR 2:160E | 1572 | 9-13-96  |
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| 908 KAR 2:170E | 1574 | 9-13-96  |
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| 908 KAR 2:180E | 1576 | 9-13-96  |
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| 908 KAR 2:200E | 3742 | 3-18-97  |

### ORDINARY ADMINISTRATIVE REGULATIONS:

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| 1 KAR 6:020    |      |                 |
| Amended        | 2833 |                 |
| 13 KAR 2:045   |      |                 |
| Amended        | 3380 |                 |
| Amended        | 3797 |                 |
| As Amended     | 4099 | 6-16-97         |
| 13 KAR 2:080   | 4017 | (See Volume 24) |
| 40 KAR 2:250   | 4018 |                 |
| 40 KAR 2:260   | 4019 |                 |
| 40 KAR 3:010   |      |                 |
| Amended        | 3604 |                 |
| 103 KAR 16:200 | 3645 | (See Volume 24) |
| 200 KAR 6:050  | 4245 |                 |
| 200 KAR 17:070 | 4246 |                 |
| 201 KAR 2:045  | 3124 |                 |
| Amended        | 3806 |                 |
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| 201 KAR 2:106  |      |                 |
| Amended        | 3866 | (See Volume 24) |
| 201 KAR 2:220  | 3125 |                 |
| Amended        | 3807 |                 |
| As Amended     | 4109 | 6-16-97         |
| 201 KAR 2:225  | 4021 |                 |
| 201 KAR 11:400 |      |                 |

# ADMINISTRATIVE REGISTER - A3

## LOCATOR INDEX - EFFECTIVE DATES

| Regulation Number          | 23 Ky.R Page No. | Effective Date  | Regulation Number | 23 Ky.R Page No. | Effective Date  |
|----------------------------|------------------|-----------------|-------------------|------------------|-----------------|
| Amended                    | 3605             |                 | 401 KAR 63:340    | 4260             |                 |
| Amended                    | 4175             |                 | 401 KAR 63:360    | 4262             |                 |
| 201 KAR 13:080             | 4250             |                 | 401 KAR 63:400    | 4264             |                 |
| 201 KAR 18:210             | 3647             |                 | 401 KAR 63:420    | 4266             |                 |
| As Amended                 | 4110             | 6-13-97         | 401 KAR 63:460    | 4268             |                 |
| 201 KAR 20:057             |                  |                 | 401 KAR 63:520    | 4270             |                 |
| Amended                    | 3606             |                 | 401 KAR 63:701    | 4272             |                 |
| Amended                    | 4176             | (See Volume 24) | 415 KAR 1:130     | 3649             |                 |
| 201 KAR 23:011             | 4251             |                 | Amended           | 4178             | (See Volume 24) |
| 201 KAR 23:020             |                  |                 | 501 KAR 6:020     |                  |                 |
| Amended                    | 4201             |                 | Amended           | 3892             |                 |
| 201 KAR 23:060             |                  |                 | 501 KAR 6:040     |                  |                 |
| Amended                    | 4202             |                 | Amended           | 4208             |                 |
| 201 KAR 23:070             |                  |                 | 501 KAR 6:060     |                  |                 |
| Amended                    | 4203             |                 | Amended           | 4210             |                 |
| 201 KAR 23:080             |                  |                 | 501 KAR 6:120     |                  |                 |
| Amended                    | 4206             |                 | Amended           | 3611             | 6-16-97         |
| 201 KAR 23:140             | 4252             |                 | Amended           | 4212             |                 |
| 201 KAR 30:040             |                  |                 | 501 KAR 6:130     |                  |                 |
| Amended                    | 3608             |                 | Amended           | 1007             |                 |
| As Amended                 | 4111             | 6-13-97         | As Amended        | 1941             |                 |
| 201 KAR 30:070             |                  |                 | Amended           | 1678             |                 |
| Amended                    | 3609             |                 | 501 KAR 6:170     |                  |                 |
| As Amended                 | 4111             | 6-13-97         | Amended           | 3894             |                 |
| 201 KAR 30:080             |                  |                 | 501 KAR 8:010     |                  |                 |
| Repealed                   | 3648             | 6-13-97         | Amended           | 3895             | (See Volume 24) |
| 201 KAR 30:081             | 3648             | 6-13-97         | 501 KAR 13:020    | 3652             |                 |
| 201 KAR 30:140             |                  |                 | As Amended        | 4113             | 6-16-97         |
| Repealed                   | 3648             | 6-13-97         | 600 KAR 1:120     |                  |                 |
| 301 KAR 2:140              |                  |                 | Amended           | 3409             |                 |
| Amended                    | 3867             |                 | Amended           | 3817             |                 |
| 301 KAR 2:172              |                  |                 | As Amended        | 4113             | 6-2-97          |
| Amended                    | 3870             |                 | 600 KAR 3:010     |                  |                 |
| 301 KAR 2:174              |                  |                 | Amended           | 3899             |                 |
| Amended                    | 3873             |                 | 600 KAR 5:010     |                  |                 |
| 301 KAR 2:178              |                  |                 | Amended           | 3411             |                 |
| Amended                    | 3874             | (See Volume 24) | Amended           | 3819             |                 |
| 301 KAR 2:251              |                  |                 | As Amended        | 4115             | 6-2-97          |
| Amended                    | 3879             |                 | 601 KAR 1:025     |                  |                 |
| 301 KAR 3:030              |                  |                 | Amended           | 3917             |                 |
| Amended                    | 3881             |                 | 601 KAR 9:140     |                  |                 |
| 302 KAR 20:180             |                  |                 | Amended           | 3613             |                 |
| Amended                    | 3882             | (See Volume 24) | As Amended        | 4116             | 6-2-97          |
| 302 KAR 40:010             |                  |                 | 602 KAR 15:010    |                  |                 |
| Amended                    | 3885             |                 | Amended           | 3615             |                 |
| 401 KAR 8:030              |                  |                 | As Amended        | 4117             | 6-2-97          |
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| Amended                    | 3808             | (See Volume 24) | Amended           | 4214             |                 |
| 401 KAR 57:011             |                  |                 | 602 KAR 50:060    |                  |                 |
| Recodified as 401-58:025   |                  | 6-10-97         | Amended           | 4217             |                 |
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| Recodified as 401-63:060   |                  | 6-2-97          | Amended           | 4218             |                 |
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| Recodified from 401-57:011 |                  | 6-10-97         | Amended           | 4220             |                 |
| 401 KAR 58:040             |                  |                 | 602 KAR 50:100    |                  |                 |
| Recodified from 401-63:042 |                  | 6-10-97         | Amended           | 4222             |                 |
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| Recodified as 401-58:040   |                  | 6-10-97         | Amended           | 4224             |                 |
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| 401 KAR 63:101             | 4253             |                 | Amended           | 3821             |                 |
| 401 KAR 63:110             | 4255             |                 | As Amended        | 4119             | 6-2-97          |
| 401 KAR 63:160             | 4257             |                 | 704 KAR 3:305     |                  |                 |
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| Amended           | 3827             | (See Volume 24) | 803 KAR 25:220    | 4024             |                 |
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| Amended           | 3922             |                 | Amended           | 4180             | (See Volume 24) |
| 704 KAR 20:070    |                  |                 | 805 KAR 1:170     | 3655             |                 |
| Amended           | 3923             |                 | Amended           | 4182             | (See Volume 24) |
| 704 KAR 20:290    |                  |                 | 805 KAR 1:180     | 3658             | (See Volume 24) |
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| 704 KAR 20:585    |                  |                 | Amended           | 3970             | (See Volume 24) |
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| 704 KAR 20:696    | 4275             |                 | As Amended        | 4130             | 5-20-97         |
| 704 KAR 20:706    | 4281             |                 | 807 KAR 5:063     | 3659             |                 |
| 780 KAR 3:070     |                  |                 | Amended           | 4185             |                 |
| Amended           | 3096             |                 | 808 KAR 10:225    | 3459             |                 |
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| 781 KAR 1:030     |                  |                 | 815 KAR 20:090    |                  |                 |
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| 782 KAR 1:020     |                  |                 | Amended           | 3035             |                 |
| Amended           | 3427             |                 | 902 KAR 2:020     |                  |                 |
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| 782 KAR 1:030     |                  |                 | Amended           | 3597             |                 |
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| 787 KAR 1:210     |                  |                 | 902 KAR 14:061    | 4282             |                 |
| Amended           | 4226             |                 | 902 KAR 20:008    |                  |                 |
| 803 KAR 2:301     |                  |                 | Amended           | 3624             |                 |
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| 803 KAR 2:306     |                  |                 | 902 KAR 47:080    | 3472             |                 |
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| 803 KAR 2:308     |                  |                 | 902 KAR 47:090    | 3475             |                 |
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| 803 KAR 2:320     |                  |                 | 902 KAR 47:100    | 3481             |                 |
| Amended           | 3932             |                 | As Amended        | 4146             | 6-16-97         |
| 803 KAR 2:402     |                  |                 | 902 KAR 55:015    |                  |                 |
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| 803 KAR 2:403     |                  |                 | Withdrawn         |                  | 6-10-97         |
| Amended           | 3939             |                 | 902 KAR 55:030    |                  |                 |
| 803 KAR 2:404     |                  |                 | Amended           | 3983             |                 |
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| 803 KAR 2:425     |                  |                 | 904 KAR 2:015     |                  |                 |
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| 803 KAR 2:500     |                  |                 | 904 KAR 2:410     |                  |                 |
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| 803 KAR 25:010    |                  |                 | Amended           | 3831             |                 |
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| 905 KAR 5:040     |                  |                 | Amended                                           | 3857             | 6-16-97        |
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| Amended           | 4196             | (See Volume 24) | Amended                                           | 3863             | 6-16-97        |
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| 905 KAR 8:180     |                  |                 |                                                   |                  |                |
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| Amended           | 4009             | (See Volume 24) |                                                   |                  |                |
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| 907 KAR 1:433     | 4284             |                 |                                                   |                  |                |
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| 907 KAR 1:655     | 4035             |                 |                                                   |                  |                |
| 907 KAR 1:665     | 4039             |                 |                                                   |                  |                |
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| 908 KAR 1:350     | 1833             |                 |                                                   |                  |                |
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|                   | 902 KAR 20:036  |                       | 904 KAR 3:042   |
| 218A.070          | 902 KAR 55:095E | 10 CFR                | 902 KAR 100:073 |
| 218A.180          | 902 KAR 55:095E | 21 CFR                | 902 KAR 55:095E |
| 218A.200          | 902 KAR 55:095E | 23 CFR                | 603 KAR 3:080   |
| 224.01            | 401 KAR 47:150  |                       | 603 KAR 5:070E  |
| 224.01-010        | 401 KAR 46:005  | 42 CFR                | 902 KAR 20:016E |
|                   | 401 KAR 46:010  | 45 CFR                | 904 KAR 2:035E  |
|                   | 401 KAR 46:020  |                       | 904 KAR 2:046E  |
|                   | 401 KAR 46:030  |                       | 904 KAR 2:050E  |

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## REGULATION

## KRS SECTION

## REGULATION

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|            | 904 KAR | 3:020  |
|            | 904 KAR | 3:042  |
|            | 603 KAR | 3:080  |
| 23 USC     | 904 KAR | 2:035E |
| 42 USC     | 904 KAR | 2:040E |
|            | 904 KAR | 2:046E |
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